Lydia H. Liu

The Clash of Empires
The Invention of China in
Modern World Making

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Contents

List of Illustrations ix
Acknowledgments xi

Introduction: Civilizations Do Not Clash; Empires Do 1
1 The Semiotic Turn of International Politics 5
2 The Birth of a Super-Sign 31
3 Figuring Sovereignty 70
4 Translating International Law 108
5 The Secret of Her Greatness 140
6 The Sovereign Subject of Grammar 181

Conclusion: The Emperor’s Empty Throne 210

Appendix: Lin Zexu’s Communication to Queen Victoria 229
Notes 243
Glossary of Selected Chinese Characters 297
Index 301
Illustrations

1. Article 51 of the Treaty of Tianjin
2. Morrison’s 1815 translation of the character yi
3. W. B. Wallen, “The Queen Receiving the Burmese Embassy” (1872)
4. “Exhibition of the English in China,” from Punch, 1844
5. Lord Elgin and the Emperor of China, from Punch, 1860
6. The title page of the Chinese translation of Henry Wheaton’s Elements of International Law (1864)
7. The world map printed in the first Chinese edition of Elements of International Law (1864)
9. The Empress Dowager Cixi posing as Avalokiteśvara (Guanyin) (ca. 1903)
11. The text of the 1911 edition of the Presentation New Testament
12. Woodblock print with fake Chinese characters, from the art installation The Book from the Sky (1988) by Xu Bing
13. The alleged throne of the Qianlong emperor in the Victoria and Albert Museum
Illustrations

14. General Yuan Shikai’s new throne chair (1915) 219

15. The 1901 Japanese photograph of the Qing emperor’s throne chair in the Hall of Supreme Harmony 220

16. An officer of the Allied Forces on the throne chair of the Qianqing audience hall (1901) 222

17. The coronation of Pu Yi as the last emperor of the Qing dynasty in Bertolucci’s The Last Emperor 224

18. A Japanese military photographer documenting Pu Yi’s recoronation in Manchuria, from Bertolucci’s The Last Emperor 227
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THE CLASH OF EMPIRES
INTRODUCTION

Civilizations Do Not Clash:
Empires Do

Language has always been the perfect instrument of empire.
—Antonio de Nebrija, Castilian Grammar (1492)

I spent the summer of 1997 conducting archival research at the British Library and the Public Record Office in London. When I first arrived, the countdown clock was ticking away, as it was the eve of Hong Kong’s historic handover to the People’s Republic of China. Newspapers updated the public regularly about Prince Charles’s preparations for the upcoming event and published opinion pieces predicting the future of Hong Kong. After glancing through the headlines each morning, I would get into an Underground train headed toward the Kew Gardens station and resume my research at the Public Record Office. There, I would spend most of my day going through the old diplomatic dispatches between the British Empire and the Qing government during the Opium Wars. It was the first of those wars that led to the British colonizing of Hong Kong in 1842.

The return of the British Crown Colony to China in the summer of 1997 refocused my attention on the issue of empire and sovereignty, one that had troubled Anglo-Chinese relations for over a century. The timing of it greatly affected the shape of my research project, as I had originally planned to work on the nineteenth-century missionary translations of the Bible. The strange experience of coming into physical contact with the official documents that had sealed Hong Kong’s fate a hundred and fifty years before and then witnessing the moment of its return to China was enough to make me ponder the meaning of it all and rethink my book project. It struck me that the contemporary quibbling over the proper meanings of “handover,” “takeover,” and “return” with regard to the sovereignty of Britain or China seemed to echo a set of older concerns and anxieties. As I was to discover in the Reading Room of the Public Record Office, the argument over dignity,
entitlement, and the proper use of words carried just as much weight as the business of the opium trade insofar as treaty negotiations were concerned in the nineteenth century. The battle of words and translations in the official archives turned out to be central, not peripheral, to the sovereign will that had driven the Opium Wars.

Having been trained as a literary critic, I am intensely interested in archives, historical texts, artifacts, and so on because these things put me in touch with the rationale and, if I may say, the essence of the theoretical work I wish to pursue. This book is engaged with the hetero-cultural legacy of sovereign thinking in the nineteenth century, broadly defined. I emphasize the moments and forms of moral and affective investment in sovereignty that articulate effectively to the modern world of empires and nation-states. The itinerancy of signs and meanings in modern global history requires that a work like this pay close attention to the extraordinary circulation of text, object, and theory across linguistic, ethnic, cultural, and civilizational boundaries in modern times. Each chapter of the book investigates a central aspect of the problematic of sovereign thinking and makes a close examination of the texts, whether legal, diplomatic, religious, linguistic, or visual. A sustained focus on desire and sovereign thinking throughout the book enables the disparate strands of my research—on international law, semiotics, imperial gift exchange, missionary translations, grammar books, and colonial photography—to interweave in ways that I had not thought possible when I first embarked on the project.

Civilizations do not clash, but empires do. Having said this, I have the burden of proving it with this book. Chapter 1 raises the possibility of reading empire by engaging with the theory of semiotics and the notion of the sign in light of the novel military technology of telegraphic communication in the second half of the nineteenth century. I argue that reading empire entails thinking historically about the intimate connections among language, war, international law, semiotic inventions, and the idea of foreignness. The chapter provides a number of theoretical and historical grids for reading later chapters and seeks to reframe the issues of intersubjectivity, indexicality, and violence in light of the work of Charles Sanders Peirce, Michel Foucault, Georges Bataille, and other theorists.

In Chapter 2 I analyze the Anglo-Chinese Treaty of Tianjin, government archival sources, and published material to show how the translation of the written Chinese character yi at the time of the Opium War led to the invention of the super-sign yi barbarian by the British, who believed that the use
of the character was intended to insult the foreigner and thus sought to ban
the word. I raise two historical questions: Why should the character have
posed a threat to law and to the emergent order of international relations?
And what are the sources of the anxiety that led to the ban?

In Chapter 3 I focus on the concept of yì in the articulation of the mandate
of Heaven and in the imperial ideology of the ruling Manchus. The Yong-
zheng emperor’s infamous literary persecution of Zeng Jing in the eigh-
teenth century, for example, poses the intriguing issue of why, unlike the
British, the Qing emperors chose not to ban the character while punishing
the Chinese dissidents who opposed their alien rule but instead gave the
Confucian concept a distinctly geopolitical reading in order to promote their
own imperial projects.

Chapter 4 tackles the circulation of international law, in particular, the
classical Chinese translation of Henry Wheaton’s *Elements of International
Law* in 1864. Drawing on archival sources, public records, and published
works, I bring to light the role that the American missionary W. A. P. Martin
played as a translator and diplomat at the close of the second Opium War.
His translation of *Elements of International Law* was a major historical event
that came to shape the relationship among the Qing, the Western powers,
Japan, and Korea in the nineteenth century.

Chapter 5 focuses on the long, overlapping reigns of Queen Victoria and
the Empress Dowager Cixi, raising new questions about gender and empire.
I attempt to develop a reading that helps us understand issues such as impe-
rial gift exchange and the sovereignty complex, as well as the colonial condi-
tion of the nineteenth-century women’s suffrage movement.

Chapter 6 centers on the sovereign subject of grammar in nineteenth-cen-
tury linguistic science. My analysis of the work of the American linguist Wil-
liam Dwight Whitney indicates that there emerged a symbiosis of interna-
tional law and the laws of language that informed comparative scholarship
as well as mainstream linguistic theory. Comparative grammar provided the
objective ground on which positivist arguments about race, culture, and
sovereign rights could be advanced and proved on behalf of the Indo-Euro-
pean language family. My study of Ma Jianzhong, the first Chinese compar-
ative grammarian, shows that when he undertook the task of composing the
monumental *Ma’s Universal Principles of Classical Chinese* (1898), he was trying
to negotiate a sovereign position for classical Chinese vis-à-vis the Indo-Eu-
ropean languages.

In the conclusion I reflect on the implications of this study for our under-
standing of the new imperial order of the present. The chapter focuses specifically on the fetishizing of the throne chairs of the Qing emperors and the circulation of visual images of those chairs via photography and contemporary film, showing how the imperial unconscious continues to be haunted by the ghost of its past.
CHAPTER 1

The Semiotic Turn of International Politics

It is not quite true, as is so often asserted, that it is the "newness" of contemporary technology that leaves us culturally unprepared. It is also the effacement of "oldness" of so many of the background assumptions and practices that lurk unexamined at the edges in these cases which contextualize the technology and frame our questions and responses.

—Paul Rabinow, Essays on the Anthropology of Reason

It may seem a truism that a nation-state cannot imagine itself except in sovereign terms. But what is the truism saying to—or, rather, withholding from—us? Consider the contemporary makeup and breakup of national territories and identities, where the personal continues to be haunted by the sovereign and where the imperial may well appear in the guise of the national. Consider also the familiar notion of human dignity. Indeed, what is human dignity if not somehow vested with the mystique of sovereign thinking? Conversely, does the loss of sovereignty condemn to existential abjection those who experience that loss and must recuperate their dignity in the name of sovereign right?

In Black Skin, White Masks, Frantz Fanon provides some extraordinary insights into the formation of what he calls the "massive psychoexistential complex" brought about by the violence of colonialism.1 The symptoms of the inferiority complex and colonial schizophrenia he diagnosed among colonized black people in the twentieth century remain potent and fascinating to this day, but they now appear to be migrating toward a different sort of problematic from that which troubled Fanon decades ago.2 Increasingly, it seems that the critique of sovereign thinking must factor into our discussion of empire and colonial abjection, so that the psychoexistential complex of colonial and postcolonial subjects may articulate meaningfully to the general problematic of sovereign rights in our rapidly changing world.
In his reflections on the condition of sovereignty in the post–cold war era, the philosopher Jean-Luc Nancy points out that globalization may appear to displace the concept of war, along with all the politico-juridical concepts of sovereignty, but the return of war appears at the very heart of these displacements, even though some may claim that it does not appear at all. "Our anxiety also testifies . . . not to a regret, or to a nostalgia," writes Nancy, "but rather to a difficulty in doing without sovereign authority [l’instance souveraine], even down to its most terrible brilliance (seeing as it is also the most brilliant)."

As we follow the movement of diasporic populations in our time, the conflicting ways of sovereign thinking among those who migrate from one sovereign state to another, be it for political asylum or economic reasons, tend to support rather than disprove Nancy’s observation about the difficulty of doing or thinking without sovereignty. For one cannot assume without a degree of philosophical naïveté that the will to sovereignty exists only among those who struggle for independent states but becomes irrelevant for diasporic communities that fight for their rights, dignity, and political recognition within an adopted sovereign state. Is political recognition not already articulated by the theory of sovereign rights? Is the personal not vested in the sovereign as one adopts the identity of an Asian American, African American, Jewish American and so on? Finally, is the argument of hybridity and multiplicity capable of grasping the ground of its own desire for sovereignty?

Inasmuch as sovereignty continues to be contested in the international as well as national realm, national and even racial identity needs to be understood and analyzed in terms of what the international is doing within the national imaginary, not just beyond its borders. This may be one of those simple lessons that dialectical reasoning can teach us; but it is not so simple when it comes to making personal choices at particular times. The choice of personal identity or bio-political belonging, of which citizenship is but part of the game, is very much constrained by the types of questions we can or cannot ask of sovereign rights in the modern world.

Such questions matter because we are dealing with a thoroughly historical, legal, and philosophical discourse of freedom. Or as Benedict Anderson rightly points out, "nations dream of being free, and, if under God, directly so. The gage and emblem of this freedom is the sovereign state." Anderson’s thesis is well made and seems indisputable on historical grounds. It is precisely on those grounds, however, that we need to pursue further the meaning of “freedom” beyond the established discourse of rights and to compre-
hend, rather than assume, the universal condition of any nation's dream of freedom when that dream must be figured a priori as a desire for the sovereign state. We should ask, for example, what renders the truth of sovereign right as freedom so self-evident, powerful, and inevitable? Insofar as sovereignty articulates a major mode of exchange between nation and empire in recent history, the truism of its truth needs to be unpacked carefully.

One of the ways in which we could begin the inquiry is to raise some new questions about desire, rights, and sovereign thinking, not exclusively in terms of legal discourse, but in light of what we can learn about colonial exchange and its production of difference, fetishism, identity, and the logic of reciprocity in translingual practices. As I try to demonstrate in this book, intellectual and material developments of this sort have had such significant bearing on sovereign thinking and the rise of international law that our study of the latter can no longer be confined to the self-explanatory evolution of legal discourse in Europe and North America. For sovereign thinking is one of those intellectual legacies of empire and nation building that must be reexamined, to borrow Edward Said's words, “according to a detailed logic governed not simply by empirical reality but by a battery of desires, repressions, investments, and projections.”

Signifying Empire: A (· ———) B (—— —· ·)

Reading empire, which is what this book essentially does, entails thinking historically about hetero-cultural and hetero-linguistic moments of sovereign thinking. It requires that we take the interactive engagements of language, war, international law, semiotic theories, and inventions among sovereign nations and empires seriously. The history of military technology demonstrates that major innovations in naval and military telecommunication systems took off in the beginning of the nineteenth century and underwent a dramatic upsurge in the latter half of the century. What it suggests to us is that the pioneers in the studies of the sign, Charles Sanders Peirce (1839–1914) and Ferdinand de Saussure (1857–1913), did not invent the meanings of the “code,” “sign,” “signal,” and so on but already shared their usage with the engineers of the Royal Navy and the inventors of Morse code, Albert J. Myer's signal system, and other nineteenth-century systems of telegraphic communication. From the start, the development of modern communication systems has been linked to military requirements and has been interwoven with the communication systems for the navy and army.
The mnemonic aid for the international Morse system (1851), designed to assist rapid memorization of the code through short syllabic alphabets, throws light on the imperial ambitions of an evolving technology. One aid, reportedly developed by Samuel Morse himself, calls for the letter A (·——) to be memorized as “Ag-ainst” and the letter B (——···) as “bar-ba-ri-an.” Thus, the first two letters of the English alphabet in international Morse code are rendered as “against barbarian.” The same memory aids continued to be used by the U.S. Army well into World War I. Morse code was thus rendered meaningful as the master code of civilization and barbarity that came to govern the local meanings of numerous military actions taken by the British, the French, the Russians, the Americans, and their allies against the peoples of Asia, Africa, the Americas, and elsewhere in colonial warfare. As I show in Chapter 2, the super-sign yi/barbarian arrived at its prominent enunciatory position during the Opium Wars when the British crusade “against barbarians” encountered one of its strangest mirror images in the Chinese character yi. The signing of the Anglo-Chinese Treaty of Tianjin in 1858, therefore, fulfilled the destiny of the mnemonic coding of A (·——) and B (——···) by banning the hetero-linguistic super-sign yi/barbarian for good.

Myer’s system of “aerial telegraphy,” the chief competitor of Morse code, was one of the most versatile of the signal systems invented in the nineteenth century. It involved waving a flag or torch to indicate individual letters according to a prearranged code. Developed around 1858, this system was based partly on Myer’s prior work as a doctor with the deaf and the mute and partly on observations made by the U.S. Army of the signal practices of American Indians during the military campaigns against the native population. According to David Lyndon Wood, Myer served as an army doctor at various rugged frontier posts in Texas in 1854–1856 and had frequent opportunities to observe how the Native Americans signaled across vast distances. Myer’s Manual of Signals suggests that his innovative code was directly linked both to the U.S. wars on the Native Americans and to intelligence gathering.

It is well known that the Swiss linguist Saussure took a deep interest in the sign language of deaf mutes and closely followed the new developments in military and maritime signaling and the telegraphic technologies of his time. The scope of his investigations included these as well as the writing systems of existing languages and artificial languages such as Esperanto. Saussure recognized the importance of the novel signifying systems and treated the inventions by European naval and commercial forces as systems
of visual signifiers among other signifying systems. Peirce, for his part, made a legendary contribution to technological development by applying Boolean logic to electric switching circuits in 1867. Both semioticians inhabited the brave new world of signs and signals invented by their contemporaries and predecessors; in that sense, they initiated the study of the sign as much as they were initiated into it by the unprecedented innovations in military communication systems that enabled the major Western powers to advance their imperial bid for domination of the world.

The proliferation of international treaties and agreements among sovereign states has left a profound mark on our thinking about language, international politics, national histories, and modernity in general. The relationship between international politics and the study of the sign, however, is not patently obvious, nor are the disciplines of international law and linguistic science in the habit of speaking to each other in today’s scholarship. Whereas treaty making and the study of language can each be dated to the centuries before the dawn of modern international relations and of modern linguistic science, the regulation of the sign and its global circulation had been unthinkable and unnecessary before the onslaught of modern colonial and global warfare. Insofar as we acknowledge the novelty of the work of Peirce and Saussure and their original contribution to the study of the sign, we must simultaneously register the novelty of the semiotic turn of international politics itself in the nineteenth century.

In recent decades a good deal of attention has been devoted to revisiting and analyzing Saussure’s notion of the conventionnel or the arbitraire that was thought to characterize the relationship between the signifier and signified in a sign. Jacques Derrida argues in Of Grammatology that Saussure’s concept of the arbitraire fails to account for the movement of the instituted trace central to the constitution of meaning and the objectivity of the sign within the classical system of oppositions. The instituted trace is where the relationship with the other is marked prior to the possibility of binary opposition and arbitrariness of the sign; but the movement of that trace, argues Derrida, is necessarily occulted, and “it produces itself as self-occlusion. When the other announces itself as such, it presents itself in the dissimulation of itself.” In contrast, Derrida discovers in Peirce’s multiple trichotomies the superior quality of being able to accommodate supple conceptualizations of the sign over and above Saussure’s binary opposition of the signifier and signified. Peirce’s notion of symbol, in particular, allows the movement and endless play of signs that appears to have anticipated Derrida’s own critique of semiology and phenomenology.
My interpretation of the Peircean symbol differs from Derrida’s endorsement of it. But before I move on to a detailed analysis of the subject, let me quickly observe that the idea of the arbitraire was hardly Saussure’s invention and could be interrogated further with reference to the semiotic turn of international politics in the nineteenth century. As I demonstrate in Chapter 6, the American linguist William Dwight Whitney’s (1827–1894) earlier elaboration of the arbitrariness of the sign resonated directly with the nineteenth-century vocabulary of positive law, and his appropriation of the concepts physis (natural) and theseis (conventional) from the Greeks bears the hallmarks of contemporary legal discourse. Saussure, who was familiar with Whitney’s work, joined this intellectual effort by developing his own notion of the conventionality of the sign for general linguistics. In an article titled “The Convention of Geneva: History of Linguistic Ideas and History of Communicative Practices,” Daniele Gambarara draws our attention to the novel uses to which “convention” was put in Saussure’s time, notably with reference to international assemblies and treaty meetings that sought to regulate semiotic projects as well as matters relating to war. The first international convention on road traffic and signals, the Geneva Convention of 1909, and the Brussels Convention of 1910 on maritime collision (and danger and distress signals) took place during the interval between the second and third courses given by Saussure on general linguistics.

The novel study of the sign, which was to exert a major impact on modern theories of language and communication, begins to acquire new meaning when approached in light of what I have called the semiotic turn of international politics in the long nineteenth century. For the first time in history, sovereign states and imperial powers convened and drew up binding treaties among themselves to regulate maritime signals, road signs, electrical codes, and other sign systems. International conventions became the venue par excellence for the standardization and adoption of various artificial sign systems. The novelty of this phenomenon is, as Gambarara puts it, that “we find men assembling in council for the purpose of establishing the meanings of signs and communication contexts by decree, and language being tested and specified by senior civil servants solemnly gathered around a table: semiotic convention at work under our eyes.”14 In 1868 a commission launched by the British and joined by representatives of other sovereign European nations succeeded in laying down an international code of signals for merchant navies, later extended into the International Code of Maritime Signals. This and other international agreements for the standardizing of
codes and transportation systems such as railways and motor vehicles were only afterwards incorporated into the various national laws. Road traffic and signals were deliberated at the Geneva Convention, while danger and distress signals (maritime collisions) became unified at the Brussels Convention, and so on.\textsuperscript{15}

What Whitney and Saussure have to say about the “conventionality” and “arbitrariness” of the sign is now common knowledge in modern semiotic discourse. All the more reason why we must reevaluate the novelty of their ideas in the context in which they emerged and, in particular, their relationship to the widespread utopia of global communication inspired by the technological innovations of their time. Particularly intriguing is the question of how and why abstract speculations about the sign mattered under those circumstances. Be it the burgeoning of new sign systems, military and otherwise, or the growing importance of international conventions that regulate semiotic practices in the international community, this course of events seems to bear meaningfully on the logic of reciprocity as practiced among sovereign nations and on the newly acquired sovereign status of the Indo-European family of languages, reigning supreme among the myriad tongues of the world. If the developments in military technologies and related legal instruments have proved indispensable to the making and consolidation of modern imperial powers, it follows that a semiotic reading of empire and a rethinking of the propositions of semiotics in light of empire are not simply unavoidable but absolutely necessary. In what follows, I explore the possibility of hetero-cultural refashioning of the notion of the sign both for the purposes of this book and for the sake of those who wish to venture beyond the Englishness of the Peircean sign or the Frenchness of the Saussurian sign.\textsuperscript{16}

**The Super-Sign: How Languages Get Thrown Together**

The familiar triad of *icon, index, and symbol* in Peirce’s semiotics is a subdivision of the dynamic *object*—a concept that brings to mind Saussure’s signified—in its relation to the sign.\textsuperscript{17} These trichotomous divisions are intended to demonstrate how the sign, the object, and the interpretant interact to produce meaning in complex ways.\textsuperscript{18} Of the triad, the *iconic* sign turns on the logic of resemblance to convey ideas of the things it represents by mimicking them; interestingly, photography is cited as an example of the iconic sign. The second group of signs, called *index*, is characterized by their primary
function of directing attention or pointing, such as a road sign, a pronoun, or a vocative exclamation like “Hi there!” The third, and by far the most dynamic and complex of the triad of signs, is the symbolic sign, which becomes associated with its meanings through convention or usage. According to Peirce, the natural language is a perfect system of symbolic signs because linguistic signs always grow out of other linguistic signs, omne symbolum de symbolo. And even the Greek etymology of the word “symbol” is shown literally to underscore this view of the sign. Peirce writes:

Etymologically, it [symbol] should mean a thing thrown together, just as ἐμβολόν (embolum) is a thing thrown into something, a bolt, and παραβολόν (parabolum) is a thing thrown besides, collateral security, and υπόβολον (hypobolum) is a thing thrown underneath, an antenuptial gift. It is usually said that in the word symbol the throwing together is to be understood in the sense of “to conjecture”; but were that the case, we ought to find that sometimes at least it meant a conjecture, a meaning for which literature may be searched in vain. But the Greeks used “throw together” (συμβάλλειν) very frequently to signify the making of a contract or convention. Now, we do find symbol (συμβολον) early and often used to mean a convention or contract.19

Peirce ponders and rejects one sense of the Greek word for “symbol” in favor of a translation that will lead him to the proper meaning of the original term in its literal, albeit already translated, manifestation: “throw together.” But in what sense does the Greek etymology truly authorize and ground his notion of the linguistic sign as symbol? Is the English term “contract” or “convention”—one that carries the full weight of positive legal discourse as discussed earlier—not already thrown together (or equated) with its Greek counterpart before the ancient etymology can present itself intelligibly and authorize particular meanings in the foreign tongue? If the answer is yes, as I am suggesting, Peirce is clearly engaged in a manner of reasoning, common among those who look toward Greek or Latin roots to help secure the meanings of modern words, that requires the hand of translation to perform the etymology yet simultaneously occults the traces of that redoubled, authorizing gesture. What I mean to say is that the act of translation exemplifies the situation of “thrown-togetherness” in the quoted passage better than the particular etymology of the Greek word συμβολον, and that same act renders the concept of the “linguistic sign” inadequate to the translated sense of “symbol.” In short, we are catapulted into the realm of what I call the super-
sign—a linguistic monstrosity that thrives on the excess of its presumed meanings by virtue of being exposed to, or thrown together with, foreign etymologies and foreign languages. The super-sign escapes our attention because it is made to camouflage the traces of that excess through normative etymological procedures and to disavow the mutual exposure and transformation of the languages.

It is a commonplace that verbal signs are not stable and can change with time and usage; but as two, three, or multiple languages are involved and implicate one another, can we recapture the foreignness of that which has penetrated the opacity of the indigenous? Registering the influx of loanwords is not enough, because loanwords tend to gesture back toward the language(s) from which they borrow the etymologies and meanings and do not bother to hide the fact, as attested to by the existence of dictionaries such as the OED. There are a large number of hetero-linguistic verbal phenomena in modern languages that do not lend themselves to loanword analysis, nor can they be properly classified as indigenous elements or even words. Recognizing them as super-signs constitutes the first step toward identifying and analyzing forms of translilingual speech and writing that would otherwise elude our grasp completely.

What is a super-sign? Properly speaking, a super-sign is not a word but a hetero-cultural signifying chain that crisscrosses the semantic fields of two or more languages simultaneously and makes an impact on the meaning of recognizable verbal units, whether they be indigenous words, loanwords, or any other discrete verbal phenomena that linguists can identify within particular languages or among them. The super-sign emerges out of the interstices of existing languages across the abyss of phonetic and ideographic differences. As a hetero-cultural signifying chain, it always requires more than one linguistic system to complete the process of signification for any given verbal phenomenon. The super-sign can thus be figured as a manner of metonymical thinking that induces, compels, and orders the migration and dispersion of prior signs across different languages and different semiotic media. For that reason, it offers ample insight into the workings of intellectual catachresis, of which this book offers many instances, such as the legal ban introduced by the British on the Chinese character yi through the super-sign yi/barbarian at the time of the Opium Wars (discussed in Chapters 2 and 3).

The super-sign marks the place where one might begin to analyze the instituted traces that Derrida mentioned, for example, in his critique of
Saussure but did not fully conceptualize as a hetero-linguistic and heterocultural movement of the signifying chain across different languages and writing systems. This movement is generally occulted so that a word may appear free of the traces of the super-sign that animates it. The super-sign is good at camouflaging the foreignness and internal split of a verbal unit by adopting the unchanging face of an indigenous word, be it in written or phonetic form, and projecting an illusion of homogeneity onto the façade of concrete worliness, the materiality of the written script, to the unsuspecting eye of a native speaker. In short, the super-sign exemplifies the semiotic operations of translanguaging speech and writing by acting out the verbal unit of one language and simultaneously displacing its signification onto a foreign language or languages, always in what one might call an occulted movement of thrown-togetherness.

Not surprisingly, when Peirce began working on his theory of the sign, he envisioned the scene of first encounter between foreigners as a pure model of communication and invited us to “imagine two men who know no common speech, thrown together remote from the rest of the race. They must communicate: but how are they to do so?” The innocuous conjuration of a first encounter presupposes, once again, a condition of thrown-togetherness between strangers and a certain hypothesis of communication that lead the semiotic inquiry in directions other than that of the etymological closure performed by the evocation of the Greek word for “symbol.” We are driven to ask: What causes the strangers to be thrown together and removed from the rest of the human world? Whence does the theological injunction “they must communicate” originate? Peirce’s originary fiction of a first encounter cannot but refer us to other originating fictions in which the primary scene had occurred before and been repeated countless times until it had blazed a trail of simulacra of first encounters since the European conquest of the New World.

Daniel Defoe had imagined just such an encounter in his novel *The Strange and Surprising Adventures of Robinson Crusoe*. The meeting of Crusoe and Friday takes place on a fictional Caribbean island and exposes them to certain risks. To what risks, one might ask, do Peirce’s fictional characters expose themselves? Is it the state of being thrown together, or their removal from civilization, or the impulse to communicate? Suppose we transpose Peirce’s hypothesis onto Defoe’s island and imagine a European outcast and a Caribbean “savage” being thrown together in this remote place and cut off from the rest of human society. Must they communicate? If so, how? Peirce
The Semiotic Turn of International Politics 15

would reply that they communicate “by imitative sounds, by imitative gestures, and by pictures. These are three kinds of likenesses. It is true that they will also use other signs, finger-pointings, and the like. But, after all, the likenesses will be the only means of describing the qualities of the things and actions which they have in mind.” The immediate occluding of finger pointing or the indexical sign troubles Peirce’s attempt to establish the primity of the first encounter in terms of mimetic iconicity. Let us pause and ask how the possibility of finger pointing may transform the local meanings of imitative gestures, sounds, and pictures and put them in the service of indexicality.

The Terror of Intersubjective Communication

The transposition of Defoe’s and Peirce’s fictions of first encounter opens the primary scene of first encounter to semiotic inquiries and enables us to ground the originary fiction of communication in a new understanding of thrown-togetherness so we may avail ourselves of other points of departure for semiotic studies as well as employ a new set of analytical apparatus in the reading of empire. Whereas Peirce’s scientific hypothesis leaves the identity of his strangers deliberately abstract and vague, the novel Robinson Crusoe is almost painfully straightforward and unambiguous in the manner in which it brings the British man and the Caribbean “savage” together on Defoe’s fictional island. Will Crusoe be compelled to talk to Friday in a Peircean vein “by imitative sounds, by imitative gestures, and by pictures”? What are the plausible semiotic conditions under which the strangers will begin their communication? This excerpt from Crusoe’s narrative account hypothesizes the scenario very well:

So to let Friday understand a little what I would do, I call’d him to me again, pointed at the Fowl which was indeed a Parrot, tho’ I thought it had been a Hawk, I say pointing to the Parrot and to my Gun, and to the Ground under the Parrot, to let him see I would make it fall, I made him understand that I would shoot and kill that Bird; according I fir’d and bad him look, and immediately he saw the Parrot fall, he stood like one frighted again, notwithstanding all I had said to him; and I found he was the more amaz’d because he did not see me put any Thing into the Gun; but thought that there must be some wonderful Fund of Death and Destruction in that Thing, able to kill Man, Beast, Bird, or any Thing near, or far off, and the Astonishment
this created in him was such, as could not wear off for a long Time; and I believe, if I would have let him, he would have worshipp’d me and my Gun: As for the Gun itself, he would not so much as touch it for several Days after; but would speak to it, and talk to it, as if it had answer’d him, when he was by himself; which, as I afterwards learnt of him, was to desire it not to kill him.25

In this extraordinary moment of first encounter, Crusoe’s communication with Friday appears to employ imitative sounds and mimetic gestures, but these mimetic acts simultaneously perform the deictic task of finger pointing. The sacrificing of the talking bird both mimics and forestalls the act of killing Friday. The latter is invited to play the audience on condition that he be capable of decoding the message correctly or else mimic the death of the parrot. Crusoe’s message does not seem lost on Friday: submit or be killed.

Now, the precariousness of Friday’s situation goes without saying, since he is thrown together with someone who has a gun and who intends to shoot him should he refuse to obey. To Crusoe, the failure of communication poses an immediate threat because it means that Friday would not recognize him as the sovereign of the island or his gun as that “wonderful Fund of Death and Destruction.” His first task, then, is to terrorize Friday, to make him comprehend the sovereign power of himself and his gun and be subjugated. Defoe anticipates Peirce’s hypothesis of communicative behavior by initiating a series of semiotic maneuvers on behalf of Crusoe. Essentially, what the Englishman does is to point and kill vicariously. The staging of literal, deictic pointing turns Crusoe’s gun into an extension of the human finger, exposing Friday to the terror of indexicality. The gun-sign initiates the familiar ritual of colonial subjugation and fetishism in the European imagining of first encounter and establishes the Englishman as the master, lord, and sovereign of the Caribbean island on the strength of his unparalleled military technology.

It should be emphasized that the power of Crusoe’s gun lies not in its physical ability to take the other’s life but in its very indexicality as a sign of terror and human intention. It would be interesting to reconsider Louis Althusser’s notion of interpelation in this light and ask whether the Althusserian pedestrian would indeed turn around to answer the call of the policeman.26 The situation can be further elucidated by the concept of deixis in linguistic theory. According to structural linguistics, a deictic situation arises when two or more interlocutors engage in a reciprocal exchange of the pro-
nominal “I” as each addresses or hails the other as “you.” Émile Benveniste, who has theorized deixis extensively, discusses the deixis of pronominal forms:

The importance of their function will be measured by the nature of the problem they serve to solve, which is none other than that of intersubjective communication. Language has solved this problem by creating an ensemble of “empty” signs that are nonreferential with respect to “reality.” These signs are always available and become “full” as soon as a speaker introduces them into each instance of his discourse. Since they lack material references, they cannot be misused; since they do not assert anything, they are not subject to the condition of truth and escape all denial. Their role is to provide the instrument of a conversion that one could call the conversion of language into discourse. It is by identifying himself as a unique person pronouncing I that each speaker sets himself up in turn as the “subject.”

Intersubjective communication is the compulsory condition under which the deictic construction of subjectivity takes place among the speakers of a language. The ground of reciprocity in deixis allows the production of difference through the deictic exchange of person as well as a simultaneous leveling of that difference with respect to reciprocal address. Benveniste’s concept of deixis escapes the conditions of truth and denial and along with them the potential risks attending the circumstances of intersubjectivity. This instrumental understanding of subjectivity, whose partial truth has been reiterated by recent poststructuralist scholarship, disavows the conceptual tie between subjectivity and sovereignty and, consequently, the possibility of raising an issue about the reciprocity of deictic address that, for all we know, may produce the relations of sovereign rule as much as it produces reciprocal subjectivity.

Benveniste’s model of communication, like Peircean semiotics before him, occults the terror of intersubjective communication to which some speakers could be exposing themselves in a given deictic situation. In contrast, Defoe’s candid tale of colonial domination suggests that the Englishman inaugurates his sovereign consciousness not only by occupying the position of the I but also by fantasizing, naming, and subjugating the other. The double act of deictic enunciation creates simultaneously a sovereign (the lord of the island) and a subject (the slave attached to the lord) as well as the phenomenological ground of intersubjective communication. I should add that such acts are often gendered if not simultaneously racialized. One of
the foremost feminist thinkers of the nineteenth century, Elizabeth Cady Stanton, was given to fantasizing the self-sovereignty of liberated (white) woman in the image of “an imaginary Robinson Crusoe with her woman Friday on a solitary island.” Such a fantasy may be shocking to today’s sensibility, but it has been part of a progressive feminist legacy that once shaped and transformed the political agendas of the imperial states of the past. As my discussion of gender and empire in Chapter 5 shows, the desire to become a female Robinson Crusoe with her woman Friday not only troubles the liberal notion of political freedom by bringing it face to face with imperial desire but also suggests that the mutual constitution of sovereignty and subjectivity merits closer attention in our theoretical reflections on power and language.

**Desire and the Sovereign Subject**

Foucault’s work on the politics of biopower has inerected a cautionary note into any subsequent attempt to take up the issue of sovereign power this way, because his theory of subjectivity is premised precisely on the idea that the archaic forms of sovereignty in the West have been superseded by the disciplinary regimes of knowledge and technologies of biopolitics which are organized around the management of life rather than the threat of death. This process of “making live and letting die” (faire vivre et laisser mourir) must be rigorously distinguished from the way in which sovereign powers used to exercise the right over life and death (faire mourir et laisser vivre). In *The History of Sexuality*, Foucault states that sovereign power was “a right of seizure: of things, time, bodies, and ultimately life itself; it culminated in the privilege to seize hold of life in order to suppress it.” If genocide is indeed the dream of modern powers, “this is not because of a return of the ancient right to kill; it is because power is situated and exercised at the level of life, the species, the race, and the large-scale phenomena of population.”

By construing an archaic notion of sovereignty within Europe’s self-referential geographic boundaries, does Foucault place imperial rule outside the narrative of European bourgeois subjectivity? Ann Laura Stoler raises a good point in *Race and the Education of Desire* about Foucault’s ethnocentrism proposing that “we should be pushed to ask what other desires are excluded from his account, to question how shifts in the imperial *distributions* of desiring male subjects and desired female objects might reshape that story as well.” Reflecting on Judith Butler’s earlier work on the subject of desire,
Stoler further argues that if a desiring subject has the philosophical aim of finding within the confines of this self the entirety of the external world in the process of externalization and mimesis, the imagined and practical world of empire must be seen as one of the most strategic sites for realizing that aim. She contends:

No political story is more relevant to the production of western desire than colonialism, itself the quintessence of a process in which the mirroring of bourgeois priorities and their mimetic subversion played a defining role. Affirmation of the bourgeois self entailed an overlapping series of discursive displacements and distinctions on which its cultivation rested. There was no bourgeois identity that was not contingent on a changing set of Others who were at once desired and repugnant, forbidden and subservient, cast as wholly different but also the same.34

Stoler’s postcolonial intervention makes it imperative for us to reconsider Foucault’s notion of assujettissement—subjugation and subjectivization—in light of modern imperial history.35 We may pursue further the question whether, by assigning the idea of sovereignty to the absolutist form of rule, Foucault was not foreclosing the possibility of investigating the condition of modern subjectivity as a reinvention of sovereignty.36 That foreclosure would presuppose the severance of the historical ties between subjectivity and sovereignty that have long defined the meaning of the one in terms of the other and would lead to the conviction that sovereign thinking has ceased to inhabit the realm of modern subjectivity and requires no further debate. George Steinmetz’s comparative work on German colonial native policy in Asia and Africa reminds us that the colonial state as an actor and determinant of its own policies was keenly invested in the production of imperial subjectivity.37

My immediate concern is not whether the power of the state and its juridical system ought to continue to engage our attention but whether sovereign power is necessarily archaic and therefore irrelevant to our consideration of desire and subjectivity in this book.38 If the answer is no, as I am trying to argue here, we may question the hypothesis that sovereign power produces only juridical subjects but not other types of desiring subjects. Judith Butler’s critique of Foucault in The Psychic Life of Power ponders a number of scenarios that bring into question Foucault’s argument of subjugation and subjectivization. She does so by making a psychoanalytical incursion into the discursive site of injury, such as a person’s seemingly perverse at-
tachment to injurious interpellations, and asks, “How do we account for attachment to precisely the kind of state-linked individuality that reconsolidates the juridical law?” Butler tries to articulate the conditions under which the resignification of prior interpellations becomes possible and emphasizes that such resignification should be regarded not as an unconscious outside of power, but rather as “something like the unconscious of power itself, in its traumatic and productive iterability.”

Does the unconscious of power point in the direction of sovereign thinking in our future reflections on modern subjectivity? I believe so. The iterability of the emperor’s empty throne, which I analyze in the concluding chapter, shows that the disenchantment of the modern world is not so thorough as to cause the fetish to lose its meaning and its power of enchantment in our own time. The throne chairs of Chinese emperors on display at the Victoria and Albert Museum and at the National Palace Museum in the Forbidden City are empty yet occupied in the sense that their emptiness is constantly filled with the dreams and fantasies of those who come upon them in museums, photographs, films, novels, and history books. The traces of sovereign thinking in the psyche of the modern subject appear to act in the manner of the unconscious of power even if they elude our grasp as such.

Let us consider a number of theoretical propositions that may further explain why the notion of sovereignty as an archaic power can hamper our ability to understand the process of subject formation in modern times. Georges Bataille has argued that sovereignty is not just about emperors, kings, or absolutist forms of rule but is about the production of subjectivity through social labor and can be central to a theory of general economy. In The Accursed Share, Bataille writes:

The sovereign does not labor, but consumes the product of the others’ labor. The share of this product that is not necessary to the subsistence of the object that the man who produces is for the time being, is the share of the subject that the sovereign is. The sovereign restores to the primacy of the present the surplus share of production, acquired to the extent that men submitted to the primacy of the future. The sovereign, epitomizing the subject, is the one by whom and for whom the moment, the miraculous moment, is the ocean into which the streams of labor disappear. The sovereign spends festively for himself and for others alike that which the labor of all has accumulated. Kings and other royalty are traditional figures of sovereign power, but Bataille is not being literal about them. The dialectic of the sovereign epito-
mizing the subject is that of Hegelian recognition (Anerkennung), whereby the multitude labor for the benefit of the sovereign and recognize him insofar as they recognize themselves in him. This is how the sovereign comes to signify and epitomize subjectivity for the multitude.

Bataille’s dialectic is almost certainly drawn from Hegel’s analysis of Begierde (desire) in the Phenomenology of Spirit, where the philosopher shows that, in the movement of desire, self-consciousness seeks absolute self-certainty by treating all otherness as something to be negated and superseded. Bataille’s reworking of the dialectic of lordship and servitude turns on a Marxian understanding of surplus value and the material and symbolic expenditure of that value. The sovereign is the one who epitomizes the subject inasmuch as he consumes the share of the product that is not necessary for the subsistence of the multitude but is otherwise productive of a miraculous moment in which the multitude recognize the sovereign insofar as they recognize themselves in him. Why does Bataille call the process a miraculous moment? Does it have anything to do with what we might call the mystified power of recognition (or conjuration)? This is the kind of issue that Frantz Fanon set out to explore in Black Skin, White Masks and he echoes and revises the Hegelian narrative:

For Hegel there is reciprocity: here the master laughs at the consciousness of the slave. What he wants from the slave is not recognition but work.

In the same way, the slave here is in no way identifiable with the slave who loses himself in the object and finds in his work the source of his liberation.

The Negro wants to be like the master.

Therefore he is less independent than the Hegelian slave.

In Hegel, the slave turns away from the master and turns toward the object.

Here the slave turns toward the master and abandons the object.

Fanon had thought long and hard about the situation of colonial subjectivity and black people’s struggle for independence. The miraculous moment arrives when the slave turns toward the master and demands a different relationship of reciprocity. “One day the White Master, without conflict, recognized the Negro slave,” writes Fanon. “But the former slave wants to make himself recognized.” The new meanings Fanon tries to wrestle from the Hegelian notion of Anerkennung lead to the contention that self-consciousness occurs when the slave demands recognition on an equal footing with the master and risks his life fighting for true reciprocity. Fanon’s engagement
with the struggle for recognition is not just a mimicking of Hegel but derives from his reflections on the history of colonial warfare and the struggle for sovereign independence.\(^\text{46}\) He converts the fiction of lordship and servitude into a historical narrative about the socioeconomic and psychological abjection of black people by European colonial domination. “As soon as I desire,” writes Fanon in the guise of a slave, “I am asking to be considered. I am not merely here-and-now, sealed into thingness. I am for somewhere else and for something else. I demand that notice be taken of my negating activity insofar as I pursue something other than life; insofar as I do battle for the creation of a human world—that is, of a world of reciprocal recognition.”\(^\text{47}\)

The dialectic of reciprocal recognition did not, however, do the same job for Fanon as it did for Bataille and the other Hegelians of his time. Jean-Paul Sartre, for instance, challenged his fellow countrymen to imagine “what then did you expect when you unbound the gag that had muted those black mouths? That they would chant your praises? Did you think that when those heads that our fathers had forcibly bowed down to the ground were raised again, you would find adoration in their eyes?” Rather than greet the French intellectual on his support of the decolonization movement with open arms, Fanon balked at those rhetorical questions and gave his legendary rejoinder to Sartre: “I do not know; but I say that he who looks into my eyes for anything but a perpetual question will have to lose his sight; neither recognition nor hate.”\(^\text{48}\) If Sartre’s rhetorical questions suggest that he somehow knew the subjugated people and their desires, Fanon resists that knowledge claim. His enigmatic response to Sartre causes the mirror of subjectivity to shatter momentarily by introducing an element of aporia into the Hegelian logic of reciprocal recognition. Looking fails to guarantee knowledge, at least not the type of knowledge a specter would impart to one’s soul. A terrifying moment of non-seeing or self-blinding may ensue from direct contact with another looking subject whose eyes may or may not return the gaze. Loss of sight, therefore, becomes Fanon’s primary figure of epistemic upheaval—a prognosis of the breakdown of the colonial mirror image of the sovereign subject.\(^\text{49}\)

**Violence and the Colonial Origins of Modern Sovereignty**

Fanon’s radical rethinking of the Hegelian struggle for recognition suggests that violence is central to the constitution of modern subjectivity. Sovereignty, far from being archaic, has a proper place in the violent structuring of
the unconscious of power and the continual investment in the workings of modern subjectivity. If Foucault’s conceptualization of sovereignty as the archaic “right to kill” is no longer adequate to the task of understanding the conjunction of the sovereign/subject, how do we go about analyzing the structure of violence in these processes?

Giorgio Agamben has provided some answers to the question in his investigation of the sovereign exception in the legal traditions of the West. His book *Homo Sacer* is an attempt to push Foucault’s central premise about life and biopower further by examining the enigmatic character of the sovereign exception and analyzing how sovereign power relates to bare life through that exception. In the course of reassessing Carl Schmitt’s and Bataille’s work on sovereignty, Agamben argues that “if the exception is the structure of sovereignty, then sovereignty is not an exclusively political concept, an exclusively juridical category, a power extended to law (Schmitt), or the supreme rule of the juridical order (Hans Kelsen); it is the originary structure in which law refers to life and includes it in itself by suspending it.”

Agamben explains the concept of sovereign exception by evoking the archaic Roman figure *Homo sacer*, a sacred figure who represents the simultaneous unpunishability of killing and exclusion from sacrifice according to Roman law. He observes a structural parallel between the sovereign exception and *sacratio* in situations where “the sovereign is the one with respect to whom all men are potentially *homines sacri*, and *homo sacer* is the one with respect to whom all men act as sovereign.” The political sphere of sovereignty is thus constituted through a double exclusion, an excessiveness of the profane in the religious and of the religious in the profane, which takes the form of a zone of indistinction between sacrifice and homicide. Thus “the sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life—that is, life that may be killed but not sacrificed—is the life that has been captured in this sphere.”

Agamben refuses to let the sovereign exception stand as an archaic problem of the remote past and takes it all the way to the Nazi state in the twentieth century in order to explain the structure of violence in the modern state’s exercise of biopower. In my view, this is an important intervention into the poststructuralist theories of subjectivity which have heretofore downplayed the problem of sovereignty and its relevance for thinking about the disciplinary regimes of power. Agamben chooses to be silent, however, on the issue of colonial violence in the discussion of violence and modernity.
a subject that had centrally engaged Fanon’s attention. When modern colonialism disappears from Agamben’s genealogy of sovereign power, should the historical linkages between colonialism and the Holocaust be likewise disavowed? The severing of the vital connections between colonial violence and the European notions of sovereignty cannot but distort the story of how sovereign power came to mean what it means. As will be seen shortly, there is ample proof in the evolution of international law that our familiar notion of sovereignty has been a product of centuries of colonial expansion, treaty making, and reciprocal dealings rather than of intra-European conflicts; but one must shed the myopia of European exceptionalism and the universalist aspirations of Western legal discourse in order to be able to observe and document these dynamic processes.

Keeping this in mind, the intervention that Michael Hardt and Antonio Negri make in their book Empire deserves a brief comment here. In the course of analyzing what they call the “sovereignty machine” of the modern nation-state, the authors argue that modern sovereignty is fundamentally different from that of the ancien régime because it has been achieved through a synthesis of sovereignty and capital and through the transcendental exercise of authority. Sovereignty turns into a political machine in this process, one that rules both as a police power and as a political power against all external political powers. “Through the workings of the sovereignty machine,” they write, in a Deleuzian vein, “the multitude is in every moment transformed into an ordered totality.” Unlike Agamben, the authors acknowledge colonialism as part of these processes and allow colonial sovereignty to be implicated dialectically by the notion of modern sovereignty, concluding that “the end of colonialism and the declining powers of the nation are indicative of a general passage from the paradigm of modern sovereignty toward the paradigm of imperial sovereignty.”

Does the passing of modern sovereignty to imperial sovereignty signify a historical passage from imperialism to Empire to which the reality of colonialism seems no longer relevant? Such a claim would have to rest on the assumption that our notions of sovereignty, modern or imperial, are not fundamentally grounded in coloniality, an assumption that must be scrutinized in light of the results of the new empire studies by Anthony Pagden and the other historians whom I will discuss shortly. The genealogy of modern sovereignty as traced out by postcolonial scholars is sufficiently different from the Eurocentric ones constructed by Foucault, Bataille, Agamben, and even Hardt and Negri as to merit serious consideration. The main point of
the dissent, as I view it, is whether coloniality enters the big picture in the manner of a belated negative dialectic or as the originary condition of modern sovereignty.\textsuperscript{35} The postcolonial scholar would argue that modern sovereignty is colonial sovereignty tout court rather than its negative mirror image, and, by extension, what Hardt and Negri identify as imperial sovereignty should be properly grasped as a response to postcolonial sovereignty. Let us ponder the matter in greater detail.

Scholars of international law have long regarded the sixteenth-century Spanish theologian Francisco de Vitoria (1492–1546) as the founder of their discipline.\textsuperscript{36} Vitoria and his students at the University of Salamanca were responsible for elaborating the basic concepts of natural law and international relations, and these concepts were further developed and perfected by Hugo Grotius, Samuel Pufendorf, and other major figures in international law. Vitoria's two main extant lectures, \textit{De Indis Noviter Inventis} and \textit{De Jure Bellis Hispanorum in Barbaros}, place the imperatives of the \textit{ius gentium}, or law of nations, unmistakably in the early years of colonial encounter. As Anthony Pagden argues in \textit{The Fall of Natural Man}, it was the "Indian problem" during the early years of the Spanish conquest of America that raised the issue of "the nature of the relations between the different groups of men within, as Vitoria termed it, 'the republic of all the world (\textit{respublica totius orbis}).'\textsuperscript{37} The central question with which Vitoria and his fellow scholastics were preoccupied was: By what right had the barbarians, namely, the American Indians, come under the rule of the Spaniards? Was it legitimate for the Spaniards to dispossess the American Indians of their land and property purely on the ground that the natives were not Christians and that they lived in what the Europeans regarded as barbarian societies? The answer to these questions, as Pagden points out, was of paramount importance at the time because the task of the theologians and jurists under Habsburg rule was to establish the ethico-political principles whereby the Castilian crown was seen to act as the guardian of universal Christendom.\textsuperscript{38}

Vitoria organizes his lectures around a consideration of legitimate and illegitimate public titles to Indian lands which define the limits of sovereign consent and authority. He concedes that the Native Americans were "barbarians" and were guilty of mortal sins and forms of heresy but rejects the idea that the moral and religious inferiority of the natives constitutes legal ground for civilized Europeans to deny them legitimate public title to the territory: "This title, or the ability to act as a sovereign, is subject to moral order which requires sovereigns to permit free intercourse and propagation of
the faith. Any attempt to violate these divinely revealed ‘rights’ terminates their public title and enables the Spaniards to use whatever force seems necessary to enforce the divine order.”

Vittoria’s reasoning is based on a notion of the *ius naturae* or natural rights, that could be applied to both “believers” and “nonbelievers.” In the lecture *De Indis*, delivered in 1537, he argued that the “affairs of the Indies” was a question not of the limits of papal jurisdiction, nor of Roman law, but of the law of nature or of natural rights. Pagden analyzes Vittoria’s complex theological arguments in his essay “Dispossessing the Barbarian: The Language of Spanish Thomism and the Debate over the Property Rights of the American Indians” and summarizes the principles of the *ius naturae* as follows:

Under the *ius gentium*, the Spaniards possessed what [Vittoria] called the “right of society and natural communication.” Seas, shores and harbours are necessary for man’s survival as a civil being and they have, therefore, by the common accord of all men, been exempted from the original division of property. It had always, Vittoria claimed, been an objective right in law that no man could be forbidden to land on any stretch of beach, no matter to whom it actually belonged, which is why Aeneas had rightly described the ancient kings of Latium as “barbari” when they refused him anchorage. This right to travel, the *ius Peregrinandi*, therefore, gave the Spaniards right of access to the Indies. There was also, under the headings of *communicatio*, an implied right to trade. As the Spaniards had come to America, or so Vittoria claimed, as ambassadors (*legati*) and traders, they had to be treated with respect and be permitted to trade with all those who wished to trade with them. And since this was a right under the law of nations, it could only (at least by the terms of Vittoria’s present definition) be changed by the consensus of the entire human community, not the will of an individual ruler. Vittoria also claimed that *ius gentium* granted the Spaniards the right (the *ius predican*–) to preach their religion without interference—although it did not compel anyone to accept it—and that it permitted them to wage a just war against any tyrant “in defense of the innocent.”

Central to Vittoria’s concept of sovereignty is the right to wage war. The last observation in the quoted passage stresses the circumstances under which the Spaniards could be justified in waging war on the native population in the name of the *ius gentium*. According to Vittoria, the American Indians maintained their legal rights and protection so long as they guaranteed the “safety and peace” of Spaniards journeying, trading, or preaching the Gos-
pel on their land. The reciprocity of “natural rights” stipulates further that, if the Spaniards’ right to trade with the natives and to sojourn in their lands were violated by the natives, it would constitute ground of injury. “The vindication of injuries constitutes a just war, and ultimately it was only by means of such a war that the Spaniards could legitimize their presence in America.”61 In that respect, Vitoria’s allusion to Aeneas is highly significant because it claims a legal precedent for what he is proposing and raises the issue of how antiquity is generally appropriated to support present and future causes.62

The requirements of freedom of trade, travel, and proselytizing anticipated their later definition as part of the standard of “civilization,” one that still prevails in the postcolonial international politics of our own time.63 Indeed, the colonial refashioning of the concepts of jus gentium, sovereignty, and rights of war during the Spanish colonial conquest of the Americas has provided a pattern rather than an exception in the evolution of the law of nations.64 The Europeans who entered the East Indies at this time found themselves unexpectedly in the middle of a complex network of organized Asian states. In terms of the law of nations of the sixteenth century, there was no room for the application of titles of discovery or occupation of terra nullius in the East Indies. Neither was this possible from the point of view of local interstate custom, which counted treaty making and cession of territory or conquest among its established legal institutions.65 Toward the end of the sixteenth century and the beginning of the seventeenth century, the Dutch began to challenge the Portuguese monopoly on trade and navigation in the East Indies. It was at this juncture that Hugo Grotius, long regarded as the forerunner of European international law, was invited (and possibly commissioned) to intervene in the Dutch-Portuguese dispute. The archival evidence collected and analyzed by C. H. Alexsandrowicz in his research on the controversy and the history of treaty making and diplomatic relations between European and Asian sovereigns speaks against the anachronistic view of sovereign rights as something that first arose as a result of intra-European conflicts and extended to non-European countries centuries later.66 This view has continued to prevail in the contemporary scholarship on international relations and, in particular, on the status of European exceptionality that is granted by the Peace of Westphalia of 1648. Modern international society is taken to be an enlarged version of European Westphalia, as summarized in this description of the latecomers: “Others advanced to full Westphalian status—the United States in 1783, Canada in
1867, and China and Japan by the early twentieth century.” But, as
Alexandrowicz has pointed out, “to consider the European nucleus of States
as the founder group of the family of nations to the exclusion of Asian So-
vereigns in the East Indies was to view the origin and development of that
family in the light of positivist conceptions which were only born at the turn
of the eighteenth and nineteenth centuries.”

In his *Introduction to the History of the Law of Nations*, Alexandrowicz has
brought to light the significant fact that Grotius carried out his study of the
Indian Ocean regimes in the archives of the Dutch East India Company,
where he first formulated the doctrine of the freedom of the sea on the basis
of what he knew of Asian maritime custom. During a time when the doc-
trine of *mare clausum* was more prevalent in European state practice than the
freedom of the high seas, Asian maritime customs served as a legal prece-
dent for his purpose. Grotius noted that navigation from east of the Red Sea
to the Pacific had been free and that local state practice never treated the In-
dian Ocean as *mare clausum*, although the Islamic-Portuguese conflagra-
tion changed the whole situation, and the arrival of the Dutch made it even more
precarious. Grotius composed his seminal text *Mare Liberum* when his op-
inion was solicited on the case of the *Santa Catharina* after a Dutch naval com-
mander named Heemskerk had captured the Portuguese galleon loaded
with valuable cargo in the Straits of Malacca in 1602 and brought it to Am-
sterdam to be sold as a prize, the proceeds being distributed as part of the
profit of the Dutch East India Company. On this case, as Alexandrowicz
shows, Grotius probably acted as a counsel for the company, and he cer-
tainly had access to company documents that revealed to him the impor-
tance of the East Indies to European trade and led him to examine the posi-
tion of Asian rulers in the law of nations.

In *Mare Liberum* (1608), Grotius attacked the problem of free seas from a
legal point of view and defended the rights of the East Indian communities
against Portuguese claims. In 1625 the Portuguese jurist Serafim de Freitas
presented his rebuttal of the Dutch position, in which he brought canon law
to bear on his approach to the East Indies problem. Both jurists covered a
wide range of legal arguments, concentrating on the questions of classifica-
tion of sovereignty and territorial rights, each concerning himself with the
problem of freedom of navigation and trade in the East Indies. Grotius elimi-
nated the possibility of conceiving the East Indies as a legal vacuum as far as
the law of nations was concerned, arguing, “These islands [Java, Ceylon,
and the Moluccas] of which we speak, now have and always have had their
own Kings, their own government, their own laws and their own legal systems." He observed that European powers coming to this part of the world could not acquire territorial or other rights by discovery, occupation of terre nullius, papal donation, or any other unilateral act carried out in disregard of the sovereign authorities governing the countries. They could consider themselves sovereigns only over territories acquired by cession or conquest in accordance with the rules of the law of nations. The Portuguese could not, therefore, by virtue of any fictitious right of sovereignty, prevent the Dutch from any access to the East Indies and from dealing with Asian sovereigns. In defense of Dutch interests against the Portuguese, Grotius conceded to East Indian sovereigns a defined legal status in the law of nations.

The long history of treaty making between Europeans and Asian sovereigns bears him out by way of testing how the concept of sovereignty actually worked in diplomatic relations. It was not until the turn of the nineteenth century that the positivist jurists began to reimagine East Asian countries as existing outside the family of nations and in need of being (re)admitted into the international order. Alexandrowicz, who had more sympathy for natural law than for positive law, observed in The European-African Confrontation: "Positivism discarded some of the fundamental qualities of the classic law of nations, irrespective of creed, race, colour and continent (non-discrimination). International law shrank into an Euro-centric system which imposed on extra-European countries its own ideas including the admissibility of war and non-military pressure as a prerogative of sovereignty. It also discriminated against non-European civilizations and thus ran on parallel lines with colonialism as a political trend." Of course, as Pagden's study of Vitoria has demonstrated, the classic law of nations itself had not existed outside of colonial violence and was already part of that history, but it did at least grant sovereign rights to peoples and territories that would subsequently be excluded from the family of nations by the jurists of positive law. The commonsensical narrative of East Asia's belated entry into the family of nations that we routinely encounter in modern scholarship is largely indebted to this anachronistic vein of positivism in international law in the nineteenth century.

In conclusion, the semiotic turn of international politics I suggested at the outset of this chapter shares some of the same positivist spirit of the nineteenth century as international law itself. One could arguably treat the instituting of international conventions as a formal and physical endorsement of the positive law notion of sovereign right. The novelty of this institution lies
in its timely grasp of the importance of language and semiotic events for international politics dominated by Europe and North America and in the growing need to regulate the proliferation of military signals and other semiotic practices. In the chapters to follow, I identify and analyze what appears to be a transcultural semiotic, which troubled the negotiations of sovereign claims between the British and Qing empires during the Opium Wars and thereafter. Chapters 2 and 3 focus on what I call the terror of intersubjective communication among the British, Chinese, and Manchus that resulted in the banning of a written Chinese character in the Anglo-Chinese Treaty of Tianjin and in the consolidation of the Chinese-English super-sign *yi* barbarian. As I will show, when the British and the Manchus disputed the particular meanings of a hetero-linguistic sign in translation and concluded treaties to fix some of its meanings, they were simultaneously disputing each other’s sovereign claim to China and turning the diplomatic negotiations into a veritable semiotic event.