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Tolerance and Rule of Law: Lessons from Imperial Governance

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1. What comes after the “linguistic turn” in legal academia? The answer may be, at least in part, the “imperial turn.”¹ It is well known that the trends toward strengthening protection of human rights brings about the end of imperial rule of empires.² This means that empires are inherently incompatible with human rights as well as tolerance and rule of law. Of course it is surely right that imperial governance tends to violate human rights as it is neither tolerant nor does it uphold the rule of law, measured against the modern standard of human rights which includes the material and core factors of political and cultural equality. However, in my opinion, such an rigid thesis about the relationship between empire and human rights is inadequate and actually hinders understanding crucial lessons to be learned from the imperial governance. Evidence of tolerance and rule of law during imperial governance can be found in the pages of history. Although the factors of tolerance and rule of law found in empires are not equivalent to those of today’s enlightened concepts, if we can learn some lessons related to tolerance and rule of law from the imperial governance, it must be still valuable to discuss and examine the history and methodology of imperial governance.³ This falls under the reason why we have to

¹ See Lauren Benton, Constitutions and Empires, Law and Social Inquiry, 2006, p.177.
³ In this sense, we can call all these kinds of approaches the “Imperial Turn”.

study and analyze the causes of rise and demise of the Roman Empire. There are lessons well worth learning.

2. This paper analyzes the book “Day of Empire” written by Amy Chua\(^4\) two years ago which triggered a controversy on imperial governance. That is, this paper was designed to examine a thesis of that book, and thus ultimately refute partly and complement the thesis comparing with the East Asian history and legal culture.

The core thesis of “Day of Empire” is as follows.\(^5\) Every world-dominant nation, so called “empire” — exactly not just an empire, and not even a great power or super power, but a hyperpower in history, was at least by the standards of its time, extraordinarily pluralistic and tolerant during its rise to preeminence for all their enormous differences. According to Amy Chua, “indeed, in every case tolerance was indispensable to the achievement of global hegemony and the decline of hyperpower has repeatedly coincided with intolerance, xenophobia, and calls for racial, religious, or ethnic purity”. Here is another core thesis: “It was also tolerance that sowed the seeds of decline. In every case, tolerance without a common political identity which

\(^4\) Professor at Yale law school.

\(^5\) Amy Chua, *Day of Empire—How Hyperpowers Rise to Global Dominance and Why They Fall*, New York: Doubleday, 2007. Originally, this book seems to be designed to refute historically the Samuel Huntington’s controversial thesis proposed in his book “Who Are We? The Challenges to America’s National identity.” In the book Samuel Huntington argues that continued immigration, particularly from Spanish speaking regions such as Mexico, threatens to tear down America’s core “Anglo-Protestant” values of “individualism”, “work ethic” and the “rule of law.” According to him, unless America rebuilds its identity, it may “evolve into a loose confederation of ethnic, racial, cultural, and political group, with little or nothing in common apart from their location in the territory of what had been the United States of America.” Amy Chua agree with his concerns about whether American society has enough “glue” to hold together its many different subcommunities, because many of historical hyperpowers in the past, such as the Persian empire and the Mongol empire were doomed to fall down because they lacked an overarching political identity capable of holding their ethnically and religiously diverse groups together. But she disagrees with him that America has to reassert and adopt the “true” American identity, such as WASP culture and WASP civic values, because history consistently shows hyperpowers have fallen prey to fragmentation and disintegration precisely when their core leading groups turned intolerant in many respects and adopted nativist or chauvinist policies attempting to expel or exclude “aliens” and “unassimilable” groups. See Amy Chua, *Ibid.*, pp. XXIX–XXX.
she calls strong ideological “Glue” that bound the empire together eventually hit a tipping point, triggering conflict, hatred, and violence.”

A hyperpower, by her definition and usage, is a “world-dominant power” that had achieved global hegemony. Accordingly she considers a nation or an empire a hyperpower only if it satisfies all three of the following conditions: “Its power clearly surpasses that of all its contemporaneous rivals; it is not clearly inferior in economic or military strength to any other power on the planet; and it projects its power over so immense an area of the globe and over so immense a population that it breaks the bounds of mere local or even regional preeminence.” In short, the hyperpower should surpass all its contemporary rival empires of its time in every respect including economy, military strength and influence. Her definition of hyperpower will be accepted and used in this paper.

In this paper, I shall examine her thesis that “Tolerance is a key condition of hyperpower” and, moreover, “Tolerance without overarching political identity sowed the seeds of decline.” However, I do not agree with her view that the strong ideological “Glue” that binds a whole empire together is the common political identity created by citizenship. Instead, I believe it is the “rule of law” and will

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6 But she does not argue that tolerance is a sufficient condition for world dominance. Additional factors such as geographical merits, enough population and natural resources, a talented leadership and even a pure luck are needed to get world dominant power. For example, the Kingdom of Bhutan is unlikely ever to become a global hegemon. Rather, she argues that tolerance is a necessary condition for world dominance. Conversely speaking, she argues that intolerance is starkly associated with the decline and demise of hyperpower. See Amy Chua, *Ibid.*, p.XXIV.

7 Amy Chua, *Ibid.*, pp.XXI-XXIII. The reason why we have to focus on not just empire but hyperpower is that a certain empire could rise without tolerance like Nazi Germany and Imperial Japan, but the most successful empire, which we call hyperpower in this paper could not have been built and prosper without tolerance. The historical lesson is that intolerant empire perished within relatively short period. Only the hyperpower could obtain longevity and strength through the tolerance policy. This is our main thesis. In these sense, only the history of hyperpowers is fit for our imperial arguments in this paper.
argue this point by examining historical case studies of East Asian imperial rule of law, specifically during the governance of Tang China and Imperial Japan.\(^8\)

3. Before beginning the main arguments, it is necessary to define tolerance and rule of law in this paper in order to avoid some conceptual confusions.

Tolerance in this paper does not mean political or cultural equality in the modern, human rights sense. Tolerance is used here simply to mean letting very different kinds of people live, work, and prosper in one’s society — even if for only instrumental or strategic reasons. To define the term a little more formally, tolerance in this paper will refer to the degree of freedom with which individuals or groups of different ethnic, religious, racial, linguistic, or other differing backgrounds are permitted to coexist, participate, and prosper in a certain world dominant empire. Tolerance in this sense does not necessarily imply respect.\(^9\)

Generally, rule of law is distinguished from “rule by law”, in which politics take priority. But if we follow such a strict distinction, we will miss so many crucial lessons from imperial governance that we can not go on our imperial arguments further, because in ancient times only the rule by law existed in almost every empire. For example, Chinese empires maintained tight political control over society by imposing rigid criminal laws and thus prevented and suppressed revolts by its subjects against the emperor or aristocracy.\(^10\) Therefore in order to extend our

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\(^8\) The reason why I don’t agree to her view that the ideological glue is a common political identity is that such kind of political identity created by citizenship, as far as it is formal and nominal, cannot be the ideological glue which bind the whole empire together. A genuine political identity can be created only through full realizing the “rule of law” ideal in the core sense. See the following chapter IV and V in this paper.

\(^9\) For example, the Romans, while recruiting warriors from all diverse backgrounds to organize their mighty and massive military, also regarded themselves as favoured by the gods and constantly expressed contempt for peoples they conquered. Moreover, tolerance can be selectively deployed. Groups perceived as useful may be tolerated even while others are excluded or violently oppressed. By the late eighteenth century, the English were learning to accept Protestant Scots as fellow Britons — particularly since th Scots were seen as assets for empire building — but this new British tolerance could hardly extend to Irish Catholics.

arguments on imperial governance to ancient empires and thus reach more general conclusions, the concept of rule of law in this paper will includes rule by law. In short, I will argue the following themes on the premise that the rule of law can exist regardless of whether we consider it fair, just, democratic, or fit for human rights.\textsuperscript{11}

II. Tolerance and Rule of Law in Empires from Ancient to Modern Times

The followings are abstracts of Chua’s view supplemented by my knowledges and thoughts about how hyperpowers rise to global dominance and why they fall.\textsuperscript{12}

1. Traditions of Persian Kings: Strategic Tolerance and the Hammurabi Code

1) A lesson from the Persian empire: tolerance

Generally it is well known that the diverse types of democracies of today all have a Greek origin, that is to say, they are descendants of the 5th century BC Athenian democracy. However, most people are not aware of the debt we owe to the Persian Empire, a contemporary of democratic Athens. Are there any lessons on earth to be learned not from the democratic Athens, but from the Persian Empire which has long been regarded as the dawn of evil imperialism? Certainly there are: the cultural, ethnic and religious “tolerance.” As a matter of fact, while democratic Athens developed an empire based on conformism and exclusion,\textsuperscript{13} the Persians developed an empire

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\textsuperscript{11} For an endorsement of this formal conceptions see Joseph Raz, The Rule of Law and its Virtue, 93 \textit{Law Quarterly Review}, 1977, p.195.
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\textsuperscript{12} Though Amy Chua examined more than ten empires in history such as Persian, Roman, Tang, Mongol, Spanish, Dutch, Ottoman, Ming, Mughal, and British empires, I will choose and introduce only four empires that seem to be fittest and enough for my argumentation in this paper.
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\textsuperscript{13} As a result, democratic polity and governments were imposed upon member states, and the penalty for dissent could be the massacre of a male population, the enslavement of women and children and the confiscation of lands.
\end{flushleft}
based on cultural, ethnic and religious “tolerance.” The Athenian empire was in origin, a device to exclude the barbarian from Greek speaking lands. In contrast, though the Persian Empire had at its core system a severe, autocratic monarchy, yet the empire was in many ways the inverse of that of Athens. The Persian Empire was politically, religiously and linguistically tolerant. There are some lessons to be learned on how such political and cultural tolerance enabled the Persian empire to survive for almost two centuries, whereas the democratic, but exclusive Athenian empire barely lasted a half.\footnote{On the contrast between democratic, but exclusive Athens and the autocratic, but tolerant Persian Empire, see John Curtis & Nigel Tallis, \textit{Forgotten Empire: The World of Ancient Persia}, Univ. of California Press, 2005, p.181.}

2) History of Persian empire: policy of tolerance and its limits

The Achaemenid\footnote{Achaemenid is the name of a Persian dynasty at that time like Tang dynasty in China.} Persian empire which is well known as a symbol of oriental despotism to most westerners\footnote{Especially in comparison with the Greece which has been regarded as a contemporary counter symbol of the Occident.} was the first hyperpower in human history. By 539 BC, Cyrus the Great had conquered both the Lydian and the neo-Babylonian kingdom. It is very important to note that “the essential strategy Cyrus employed was ‘decapitation’ not of the leader’s head, but of leadership.”\footnote{Amy Chua, \textit{Ibid.}, p.8. This strategy of Persian Empire was in contrast to that of Mongol Empire. “By killing the aristocrats, the Mongols essentially decapitated the social system of their enemies and minimized future resistance. Some of the cities never recovered enough to rebuild after the loss of aristocrats on the battlefield or from the annihilation of their families. Genghis Khan wanted their officeholders who were loyal and indebted to the Mongols alone for their positions of power and prestige.” See Jack Weatherford, \textit{Genghis Khan and the Making of the Modern World}, New York: Crown, 2004, pp.112~123.} For example, after conquering each new kingdom, Cyrus removed the local ruler or king, but spared his life allowing him to live in luxury, and replaced him with a satrap\footnote{The satrap was almost always a member of the Persian aristocracy.} who had the authority to govern the conquered territory or satrapy. Under the rule of satrap, Cyrus embraced linguistic and religious diversity among conquered peoples such as
the Elamites, Babylonians, Egyptians, and Greeks. He codified and enforced local laws, keeping in place the local authority structure. More surprisingly, it was even possible for high ranking officials in conquered territories to retain their official positions under Achaemenid rule.

The Persian Empire was at its zenith under Darius the Great, who expanded Persian dominion into India, strengthened its foothold in Greece, and even extended its power into eastern Europe in roughly 522~486 BC. Not only handed down he the Achaemenid tradition of cultural and religious tolerance that descended from Cyrus’s rule, but also he carried it further. He took pride in the extraordinary diversity of his empire and respected his empire’s multilingualism, describing himself as the king of the people of every origins. Darius did not impose Persian gods on his subjects. On the contrary he exhibited great reverence for local cults and divinities. He also left local social structures largely intact. In fact, he is reputed to have codified and enforced local laws. For example, he upheld and guaranteed decisions made by Egyptian judges and recognized and sanctioned the Torah as the law of Israel. By instituting such policies of tolerance, Darius instead of wasting resources destroying conquered populations or trying to “Persianize” them, harnessed their diverse skills, talents, and resources. In this way, Darius built some of the most splendid imperial capitals the world had ever seen such as Susa and Persepolis.

By embracing local laws and traditions, and by allowing local languages, religions, and rituals to flourish, the Achaemenid Persian kings minimized the feasibility of

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19 Most inscriptions read “I am Darius, the great king, king of kings, king of lands of every tongue, king of this great distant territory ….” See A.T. Olmstead, _History of the Persian Empire_, Univ. of Chicago Press, 1948, p.122~123.

20 As for Persian law and legal policy, see A.T. Olmstead, _Ibid._, pp.119~134.

21 Some legal cases and decisions in Egyptian ancient records are known to us. See J.H. Breasted, _A History of Egypt: From the Earliest Times to the Persian Conquest_, New York: CHARLES SCRIBNER’S SONS, 1951(first published 1905), pp.239~245.


23 Susa is the first capital which mainly had played a administrative role, built earlier than Persepolis, the second capital of the Persian Empire.
opposition and revolt among conquered peoples. In addition, through the policy of
drawing on the specialized talents of the empire’s best artists, thinkers, workers, and
fighters disregarding differences in language, ethnicity or religion, they turned
cultural diversity into a source of synergy and strength.\textsuperscript{24}

However, Chua notes “Ironically, the very tolerance that enabled Cyrus and Darius
to build their immense empire sowed the seeds of the intolerance that followed.”\textsuperscript{25}

As the first hyperpower, the Persian Empire faced, but never solved the same
fundamental problem that would confront every subsequent world-dominant power.
That is the creation of a common political identity, the so called “ideological Glue.”
Although militarily unified, the Achaemenid Empire had no overarching political
identity, as modern nations do. No common religion, language, or culture could bind
the sprawling empire together. Achaemenids subjects generally did not feel any
special allegiance to the empire or take any particular pride in belonging to it.\textsuperscript{26} That
is to say, “there was no Persian identity that might have induced the peoples, in all
of their diversity, to rise up and defend some common norms.”\textsuperscript{27}

In short, lacking any strong ideological glue capable of holding the empire’s
disparate peoples together, the Persian Empire lost control and fell apart. The
distinct peoples whose identities had been preserved and strengthened through
persistently handing down the Persian policy of tolerance, eventually proved to be
the empire’s Achilles heel as those same people turned on the empire with
increasing antagonism.

3) Legal system of Persian empire: Hammurabi code as a model for Persian law

\textsuperscript{24} See Lindsay Allen, \textit{The Persian Empire}, Univ. of Chicago Press, 2005, pp.86~ 131.

\textsuperscript{25} Amy Chua, \textit{Ibid.}, pp.21~22.

\textsuperscript{26} Unlike Achaemenids subjects, the subjects of the Roman Empire felt allegiance to the empire and
took pride in belong to it. This is a crucial difference between the two empires.

\textsuperscript{27} Amy Chua, \textit{Ibid.}, p.22.
It is hard to imagine that there existed really Persian laws which were effective throughout the whole empire. As we have seen above, Persian kings codified and enforced local laws, so at the regional level the existing local laws were abided by the judges, lawyers and bailiffs of each satrapy.\textsuperscript{28} There was, however, an important legal reform, under the Darius the Great, applied to the whole empire. Darius had to contend with a rash of opportunistic revolts brought about by the questionable nature of his ascent to the throne. The subsequent two years spent in suppressing these revolts brought chaos to many regions and revealed to Darius the weakness in the imperial structure. He felt the need to reorganize the whole empire. After settling down in Susa where he began to erect a palace, he turned his energies and attention to his first \textit{project for} reforms. It was to enact a new law to be enforced upon the whole empire.\textsuperscript{29}

The new law followed the Babylonian model\textsuperscript{30}; Darius and his legal advisers consulted an actual copy of Hammurabi’s lawbook.\textsuperscript{31} The law administered by Babylonian judges was not code law as the term is understood by continental European jurists; rather it was similar to the common law of Anglo Saxon nations, which is based on precedents. In short, the Hammurabi code was similar to a casebook. In general, the character of the Hammurabi code is known to be harsh. Punishments for crimes were severe. As a matter of course, offenses against the state, against the person of the king or his family, or even against his property were liable to the death penalty. Punishments were often horrible. There is little information on the punishment for ordinary crimes, but mutilation of hands or feet or blinding of the eyes appear to have been common.\textsuperscript{32}

\textsuperscript{29} See Olmstead, \textit{Ibid.}, p.119.
\textsuperscript{30} See Maria Brosius, \textit{Ibid.}, p.40.
\textsuperscript{31} See Olmstead, \textit{Ibid.}, pp.120~128. On these facts, Olmstead provided enough historical evidences in this book.
\textsuperscript{32} On the character of Hammurabi code, see Olmstead, \textit{Ibid.}, p.130.
According to A.T. Olmstead, the Babylonians had recognized the supremacy of law.\textsuperscript{33} This fact may be interpreted as follows: there could have existed the idea of rule of law in Persian Empire as the Greek had the idea in Aristotle.\textsuperscript{34} Yet it seems incorrect to assert that the Persian Empire was ruled according to the idea of supremacy of law. The Persian kings were the absolute rulers in the empire. The king was the head of not only political, military power, but also judicial power.\textsuperscript{35} For this reason it would be more persuasive to say that there was just rule by law in the Persian Empire. This conclusion could be supported by the evidence, the character of the Hammurabi code.

2. \textit{Pax Romana} and equal Citizenship

1) Roman tolerance

As we know in general, Rome is the iconic empire in the West. Though Rome fell short of the Persian Empire on the territorial scale, it surpassed the Persian empire in every other way. Unlike Achaemenid Persia which was essentially just a military organization, “Rome was also an idea.” More than just an immense military power, Rome was a symbol of Western civilization, achieving heights in science, literature, and the arts that would not be overtaken for more than a thousand year. Inhabitants from the farthest reaches of the empire wanted to be – and became — “Roman”.\textsuperscript{36} Like Achaemenid Persia, imperial Rome incorporated conquered nations by making them provinces(\textit{civitates peregrinae})\textsuperscript{37} of the Roman Empire.\textsuperscript{38} Also like the Persians,

\textsuperscript{33} Olmstead, \textit{Ibid.}, p.120.

\textsuperscript{34} Aristotle said “Laws, when good, should be supreme”. This proposition has been regarded as the origin of the idea “rule of law”. See Aristotle, Politics 1287a 25~30.

\textsuperscript{35} See Maria Brosius, \textit{Ibid.}, p.32.

\textsuperscript{36} Amy Chua, \textit{Ibid.}, p.29.

\textsuperscript{37} This term precisely means provincial or literally “foreign” states such as Greek city states or Celtic tribes.

\textsuperscript{38} During the High Empire, there were about forty such provinces in Rome. Each province was set under the authority of a Roman governor. Governors of provinces were selected from the ranks of the
the Romans marshaled the services of local elites to help rule their extensive empire. They kept local governments largely intact, allowing them to continue ruling the day-to-day lives of their subjects. Rome allowed them to enjoy local autonomy. Of course, this was not just a case of altruism on the part of the ruler towards the ruled subjects, but a natural consequence of the way Rome had acquired its empire. That is to say, “the degree of local autonomy depended on a community’s initial contact with Rome.”

But unlike the Persian Empire, there was no limit on the power that elites from the provinces could achieve in the Roman Empire. Whereas all the Persian kings and virtually all of its governors were Persians, as Roman citizenship was systematically granted to people living in all the provinces of the empire and even men of provincial origin were able to climb up its ranks to the highest position of emperor. That is, Rome’s highest power holders, including emperor himself, could come from every corner of the imperial world, which meant surprisingly emperors could be made elsewhere than at Rome. During the zenith of the empire, being “Roman” was a cultural identity “that allowed citizens from savage and barbarous nations to participate in the political process and share in the power and prestige of the empire.”

2) The virtue of Roman citizenship


41 Like Trajan from Spain.
42 Racism in the modern sense did not exist in Rome. Amy Chua, Ibid., p.41.
As such, the Roman Empire had a powerful attraction. Conquered subjects from Britannia to Arabia wanted citizenship, to be “Roman.” Unlike the Persian Empire or other ancient empires “Rome represented a *communis patria*, that is a common fatherland, for its diverse subjects.”

“A critical piece of Rome’s cultural formula was the enticement of Roman citizenship.” Roman citizenship, like American citizenship today, carried with it certain privileges irrespective of the holders’s ethnic origin. To pacify its defeated enemies, “Rome held out the olive branch of citizenship”, and for centuries this strategy helped hold the empire together, allowing it to expand to the edge of the known world. At its core, the citizenship provided the legal status necessary to eventually join the ranks of the elite, and it guaranteed a certain level of protection, from the imperial officials above as well as from the masses below. Generally, Roman citizenship meant the right to be protected from Roman official’s illegal intervention such as consuls or praetors; the right to be immune from summary corporal punishment; the right to appeal to higher court(*ius provocationis ad populum*); the right to freedom of religion and speech; the right to vote; the right to hold property and make contracts; the right to freedom from torture; the right to special protection from the death penalty; and the right to equal treatment under Roman law. Though Romanization of local communities fundamentally began with

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46 The numbers of non-Roman communities whose citizens had Latin rights and Roman citizenship, was not static, and the first two centuries of the Empire saw the steady and sometimes dramatic increase of the latter. Throughout this period large number of individual *peregrini* acquired Roman citizenship until finally at the beginning of the third century the distinction between non-Roman and Roman, full Roman citizenship and Latin rights became meaningless with the edict of Caracalla, by which all free born provincials were granted Roman citizenship. See Mark Hassall, *Ibid.*, p.692.
the aristocracy, then there were a number of roads and avenues to the Roman citizenship.\textsuperscript{48} Public officeholders were typically granted Roman citizenship automatically regardless of their race or ethnicity. In this way, the gradual Romanization of the local elite was achieved through the awarding citizenship.\textsuperscript{49}

The institution of Roman citizenship, something to which even the humblest provincial person could aspire, was one of the great open secrets of the Roman Empire, and perhaps more than any other factor contributed to internal stability among the provincials.\textsuperscript{50}

3) A lesson from the demise of Rome: Intolerance

Rome was even more successful than the Persian empire in assimilating its diverse conquered peoples through the citizenship, equal participation in the empire, and the appeal of Roman culture.\textsuperscript{51} However, like Persia, its policies of tolerance that allowed “too much diversity” sowed the seeds of its decline. As the empire grew and the diversity of its people increased, so its sheer heterogeneity became more difficult to manage. The empire began slowly more and more to be hollowed out from inner parts as long quiescent subjects revolted and allowed other subjects who were once royal to the empire seized the opportunity to build independent states. The situation was also exacerbated by Rome’s descent from its golden age into an era of intensifying religious persecution and ethnic bigotry. Thus intolerance quickened the destruction of the vast empire.

\textsuperscript{48} On diverse methods to acquire the Roman citizenship, see Mark Hassall, \textit{Ibid.}, pp.693–697.

\textsuperscript{49} But Roman citizenship was not limited to the upper classes. For example, many people among lower classes were incorporated into the ranks of citizens through service in the army and even the slave who were given their freedom could acquire the full Roman citizenship(by the way of manumission of slave). See, Mark Hassall, \textit{Ibid.}, p.694.

\textsuperscript{50} Mark Hassall, \textit{Ibid.}, p.685.

\textsuperscript{51} Whereas most of the people under Persian Empire never “Persianized”, stunning numbers of Roman subjects “Romanized”.
“Christianity was deeply implicated in the new intolerance, first as a target and later as its primary source.”\textsuperscript{52} In 303 AD, the emperor Diocletian launched the “Great Persecution” against Christianity. In the war between Rome and the Christian Church, the church won. Constantine the Great who converted to Christianity, emerged as the emperor. With his conversion, the persecution of Rome’s millions of Christians abruptly ended, but for the rest of the empire’s inhabitants, the era of persecution began.\textsuperscript{53} To make matters worse, intensifying ethnic conflicts were sweeping over Rome. The combination of religious and ethnic intolerance sparked wars and internal rebellions that eventually spelled the demise of the Empire.

3. Genghis Khan and the Great Mongol Empire

1) Genghis Khan’s strategy: tolerance policy

How is it that illiterate Mongol Khans were able to rule over an vast empire far larger than the Romans ever conquered? The nomadic Mongol people had neither expertise in science and engineering, nor a written language of their own. They had no agriculture and could not even bake bread. Nevertheless, they ruled over half the known world, including the most magnificent cities of its time such as Baghdad, Moscow, and Damascus.\textsuperscript{54}

Genghis Khan united the warring tribes of the steppe and conquered more territory and people than any other man in history. Mongols, though they lacked any sophisticated technology of their own, through a policy of toleration\textsuperscript{55} came to wield weapons of mass destruction such as catapults, explosives, and portable towers which enabled them to defeat the great walled cities of medieval China, Persia, and

\textsuperscript{52} Amy Chua, \textit{Ibid.}, p.53.


\textsuperscript{54} Jack Weatherford, \textit{Ibid.}, p.xviii.

\textsuperscript{55} On Mongol’s art, science and technology acquired by toleration policy, see \textit{Ibid.}, pp.218~237.
eastern Europe, and governed an empire that stretched from the gates of Vienna to the East Sea.\(^{56}\)

Undoubtedly, Genghis Khan was a brilliant military tactician. The Mongols were also utterly ruthless in battle.\(^{57}\) At the same time, however, he pursued policies that were remarkably tolerant in comparison to contemporary rulers of his time and even more tolerant than that of Rome in some aspects.\(^{58}\) While in Europe heretics were burned to death at the stake, Genghis Khan decreed “complete and total religious freedom for everyone” which was the first law of its kind anywhere in the world.\(^{59}\) This religious tolerance continued to be a hallmark of Genghis Khan’s rule.\(^{60}\) It proved to be a powerful tool of empire building as well.\(^{61}\) By embracing ethnic diversity, he managed to break down the tribal barriers that had previously divided

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\(^{56}\) Regretfully, Amy Chua adopted a name of Sea of Japan in place of East Sea. I corrected her error. See Amy Chua, Ibid., p.89.

\(^{57}\) They poured molten silver into the eyes and ears of their enemies and killed treacherous women by sewing up their orifices. Jack Weatherford, Ibid, pp.93~ 94, 113.

\(^{58}\) According to Weatherford, “Romans imposed their own civilization such as Latin language, their gods, and preference for wine, olive oil, and wheat agriculture even in locales where it did not thrive. Each Roman city from Ephesus in Turkey to Cologne in Germany had the same urban design and architectural style, from markets and baths all the way to the smallest details on the columns or doorways.” On the contrary, the Mongols “brought no distinctive architectural style with them. Nor did they seek to impose their language and religion on the conquered since in most cases they forbade non-Mongols to learn their languages. The Mongols did not force cultivation of an alien crop nor impose radical change on their subject’s collective way of life.” See Ibid., pp.226~227. But there are many evidences which prove that the Romans did not impose Latin language and their religion. Especially see Fergus Millar, The Roman Empire and its neighbours, Second Edition, London: Weidenfeld & Nicolson, 1981, p.153~154; Peter Garnsey & Richard Saller, The Roman Empire: Economy, Society and Culture, Univ. of California Press, 1987, pp.168~173, 186~192.

\(^{59}\) Jack Weatherford, Ibid, p.69. Although Genghis Khan continued to worship the spirits of his homeland, he did not force them to be used as a national cult. In addition, to promote all religions, he surprisingly exempted religious leaders and their property from taxation and all types of public services.

\(^{60}\) After death of Genghis Khan, the Mongol capital “Karakorum was probably the most religiously open and tolerant city in the world at that time. No where else could followers of so many different religions worship side by side in peace.” See Jack Weatherford, Ibid, p.135.

\(^{61}\) About some historical examples which shows the success of Genghis Khan’s religious tolerance policy, see Amy Chua, Ibid., pp.101~102.
the people of the steppe and he was able to draw into his service the most talented
and useful individuals living within the conquered territories.\textsuperscript{62}

2) Mongol Khan’s tolerant legal policy

The empire’s legal policy was also very tolerant. Before unification, all Mongol
tribes had followed their own unique customs and traditions. Genghis Khan unified all
the various tribal customs and traditions with the proclamation of the first common
written code, the Great Yassa.\textsuperscript{63} Nevertheless Genghis Khan allowed herding tribes
to follow their own traditional customs in their area, so long as it did not conflict
with the Great Law laid down by him, which functioned as a supreme or common law
of the land applicable to everyone.\textsuperscript{64} Although Khubilai Khan, recognized the
importance of enacting a clear and strong legal code, he did not wholly replace
Chinese law with Mongol law. Instead, he not only reformed Chinese law to be
compatible with Great Yassa but he also instituted a more humane and a less harsh
system of laws and punishments than those under Chinese rule.\textsuperscript{65} All in all, then, the
tolerant ethnic, religious, and legal policies also contributed to Mongol world
dominance.

\textsuperscript{62} For example, at the conquest of northern China, he made his profit of human capital. Genghis Khan,
brought back from northern China regiments of soldiers and officers, many of whom had surrendered to
the Mongols and many engineers: acrobats, jugglers, contortionists, singers, musicians, and dancers, as
well as skilled workers of every kind, including tailors, pharmacists, translators, potters, jewelers,
astrologers, painters, smiths, and doctors. Despite his own illiteracy, Genghis Khan specifically
recruited scholars of all ethnicities, like the erudite, polyglot Yelu Chucai, a member of the Khitan royal
family, who would advise Genghis Khan wisely and devoted loyalty to the end.


\textsuperscript{64} According to Weatherford, “Genghis Khan even proclaimed the supremacy of the rule of laws over
any individual, even the sovereign. By subjugating the ruler to the law, he achieved something that no
other civilization had yet accomplished. Unlike many civilizations—and most particularly western
Europe, where monarchs ruled by the will of God and reigned above the law—Genghis Khan made it
clear that his Great Law applied as strictly to the rulers as to everyone else.” But his descendants
abided by this rule for only about fifty years after his death before they discarded it. See Jack

3) The causes of decline: religious and ethnical intolerance

Genghis Khan’s desire was “to unite the whole world”. However, as is the case with every empire, the collapse and decline of the Great Mongol Empire was fueled by many factors such as incompetent leaders, corruption, revolts, decadence, factional struggle, assassination, external attacks, bad luck, and perhaps most importantly it was triggered by a stark turn towards intolerance. The Mongol rulers of the fourteenth century aligned themselves with powerful religious factions related to Islam within their territory. In addition, whatever the cause was, the late Yuan emperors increasingly defined themselves as different from their Chinese subjects, stressing their Mongol identity, and rejecting the Chinese language and culture. As such, there was an increase in xenophobia and the number of religious persecutions within the empire. Before long, the Great Mongol Empire disintegrated.

4. The Empire on which the sun never sets but unequal Citizenship

1) Origin of British empire

During most of the 16th and 17th centuries, Britain was plagued by vicious religious and ethnic battles. Protestants massacred Catholics, Catholics beheaded Protestants, Anglicans persecuted dissenters, and Englishmen slaughtered Irish, Scots, and Welsh, all of whom retaliated in kind. In other words, “Indeed, the Britons of this period could almost be compared to the Mongols before the Genghis Khan, exacting revenge on one another, caught in seemingly unending cycles of bloodshed and mutual destruction.”

This situations dramatically changed beginning with the reign of William and Mary. In 1689, the English parliament passed the revolutionary Bill of Rights and the Act of

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Toleration. Though both documents had crucial limitations these decrees marked the beginning of a new era of toleration. Although cases of bigotry and brutality continued, particularly toward Catholics, Great Britain would over the next two centuries earn the reputation as the most tolerant nation in the world.

2) The first enlightened tolerance and its limits

England’s remarkable turn toward tolerance after 1689 enabled Great Britain to achieve global dominance in the long run. Furthermore, in the nineteenth century, Great Britain embraced and realized the ideals of the Enlightenment by accepting the principles of universal equality and permitting members of different ethnic and religious groups to become full citizens of Great Britain with the same social and political rights as native Englishmen. However, as it achieved global dominance, the values of pluralism and tolerance embraced at home was not extended to India, Rhodesia, Jamaica, and its other colonies. That is, overseas, Great Britain practiced ethnic and racial discrimination based on Christian superiority.

There was a glaring difference in the way the British treated its white and non-white colonial subjects. Though from the 1840s, the British voluntarily began granting its white subjects in Australia, Canada, and New Zealand the same rights and liberties won by the American colonies in the 1770s, as well as Britain’s other white dominions, Britain’s racial and ethnic prejudices prevented such principles of

68 Toleration Act permitted Protestant dissenters freedom of worship.
69 For example, the Toleration Act protected only Protestant dissenters, not Catholics. Catholics were still to be exposed to persecution by punishment of criminal law. But as the persecution by criminal law became more and more a dead letter and the prejudice against Catholics lessened, the Catholics gradually came to be able to confess their faith. On “Toleration Act”, see Jong II Nah & Gyu Beom Song, *A History of Britain*, Paju, Korea: Hanwool Academy, 2005, Vol. II, p.478 and footnote 11) at the same page.
toleration from being extended to its non-white colonies\textsuperscript{72} as the British extended to its white dominions.\textsuperscript{73}

3) Creation of ethnical and religious differences and the fall of empire

In the case of India, the Britain did not allow India self-governance enjoyed by Canada and other white colonies. Instead of granting self-rule, India experienced crackdowns and repression at the hands of the Britain. The British government in India enacted the repressive Rowlatt Acts. The Acts which imposed curfews on natives and curtailed rights to protest, essentially instituted martial law and banned public gathering for three years.\textsuperscript{74} Britain maintained absolute rule over India,\textsuperscript{75} denying Indian subjects any political representation.\textsuperscript{76} In response, waves of protests, marches, strikes, and political agitation swept across India.\textsuperscript{77} To make matters worse, the Anglo-Indians\textsuperscript{78} blatantly persistent racism intensified antagonism and backlash among the Indian elites, who increasingly allied themselves with the mass

\textsuperscript{72} For example, India, Pakistan, Rhodesia, Kenya, Iraq, Egypt, Burma.
\textsuperscript{74} The Rowlatt Act was a law passed by the British Raj in India in March 1919, indefinitely extending “emergency measures” (of the Defence of India Regulations Act) enacted during the First World War in order to control public unrest and root out conspiracy. Passed on the recommendations of the Rowlatt commission, named for its chairman, British judge Sir Sidney Rowlatt, this act effectively authorized the government to imprison, without trial, any person suspected of terrorism living in the Raj. The Rowlatt Acts gave British imperial authorities power to deal with revolutionary activities.
\textsuperscript{75} To see more differential legal policies in detail in British India, see Elizabeth Kolsky, \textit{Codification and the Rule of Colonial Difference: Criminal Procedure in British India}, \textit{Law and History Review}, Fall, 2005, pp.631~683.
\textsuperscript{76} Amy Chua, \textit{Ibid.}, p.213.
\textsuperscript{78} The immigrants from England.
nationalist movement and thus supported the expulsion of British business interests.\(^{79}\)

Similarly, Great Britain did not treat the Irish equally to the Scots or the Welsh mainly because of religious differences.\(^{80}\) The reality of Irish Catholics was one of unrelenting subjugation and degradation. The Penal Laws of the 17th and 18th centuries had barred Catholics from public office, restricted their education, denied them the vote, and effectively stripped them of their property.\(^{81}\) On the Easter of 1916, while Great Britain was preoccupied with war, armed Catholic rebels rose up in Dublin, seizing buildings and declaring independence.

In short, “the racial and ethnic arrogance created the same limits on British tolerance in its Asian and African dominions as anti-Catholic prejudice had in Ireland.”\(^{82}\)

### III. Political Identity for successful Empire

1. Persian and Mongol case

According to Chua, “the most successful hyperpowers of the past invariably found ways to co-opt and enlist the services of local elites, providing these elites with a stake in the hyperpower’s success and a sense of identification with its institutions.” In short, “This kind of ‘Glue’ is the essential condition for strength and longevity of hyperpowers.”\(^{83}\) The ‘Glue’ here refers to a political identity that binds the empire together. Historical cases support this thesis.


The first hyperpower in history, Achaemenid Persia, as we have seen above, had not created an overarching political identity and thus less than a century after its founding, the Achaemenid Empire was riven by fragmentation and separatist rebellions.

How about the Mongols? Through strategic tolerance, Genghis Khan succeeded in creating a single people out of the warring tribes of the Mongolian steppe. Thus, Genghis Khan accomplished what Cyrus the Great never did, he established a new political identity for his people. But this identity — the Great Mongol Nation or People of the Felt Walls — extended no farther than the nomadic steppe. Beyond the steppe, the fearful and disdainful populations the Mongol subdued never acquired any affiliation with the empire. Of course, there was a kind of citizenship but it fell short of Roman’s legal status of citizen granted to its conquered subjects. In extending kinship to the Siberian tribes and the Uighur, Genghis Khan did not merely make alliances between his family and their ruling families. He accepted the entire tribe or nation into his empire as familial members, since, in the political idiom of the tribes, granting kinship to the Khan was tantamount to recognizing family ties with the whole nation. In this way, the idiom of kinship had expanded into a type of citizenship. As Genghis Khan continued to utilize and expand that idiom in the coming years, this came to be a form of universal citizenship: one not based on a common religion, as among Christian and Muslim people, or just on biology, as in traditional tribal culture, or even on equal law, as in Roman Empire. Instead the citizenship was based simply on allegiance, acceptance, and loyalty unlike that of Roman which could be acquired by mainly legal base. Though Mongol armies were the mightiest in the world, the empire quickly splintered into four large kingdoms before breaking up

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84 See Jack Weatherford, *Ibid*, p.76. As time goes on, “all the non-Mongol kingdoms in the Mongol Empire became known as Khari, derived from the word for “black” and connoting “in-laws”. Thus the select nations such as the Uighur and the Koreans, as well as the select Turkic groups, would have the honor of being in-laws to the Mongols, whereas intermarriage outside of the “black-kin” would not be permitted.” *Ibid*, p.77.
entirely as they did not have a common political identity\textsuperscript{85} to bind together legally its culturally dissimilar components.

2. Roman and British case

Among all of the historical hyperpowers, the Roman Empire came closest to creating a common political identity capable of generating loyalty among its far-flung subjects which accounts for the spectacular longevity of the empire. Through its attractive cultural package and its extension of citizenship to Greeks, Gauls, Britons, and Spaniards alike, the Empire managed to “Romanize” a vast number of different peoples living apart in various continents.

A millennium and a half later, Great Britain was surprisingly successful in this respect too. As late as the 1890s, members of the Indian National Congress cheered whenever Empress Victoria’s name was mentioned. Hundreds of thousands of Indian soldiers fought for the British in World War II, and even men like Gandhi and Nehru, the eventual leaders of India’s independence movement, were deeply loyal to the crown in their early days, seeing themselves as “above all, British citizens of the Great British Empire”\textsuperscript{86} But as we have seen above, there were limits in Britain’s “equal citizenship” policy. For this reason, though the Great Britain collapsed mainly thorough the growth of nationalism, the Roman Empire did not so, but through the internal economic difficulties and external military pressures.\textsuperscript{87}

\textsuperscript{85} Mongol identity was acquired just by oath of devotion and allegiance to Mongol Khan. The Baljuna Covenant, that had the background of mythic aura shows well the origin, identity and form of the Mongol Empire. This kind of oath created a type of brotherhood, and in transcending kinship, ethnicity, and religion, and according to Weatherford, it came close to being a type of modern civic citizenship based on personal choice and commitment. See \textit{Ibid}, pp.58~59.


\textsuperscript{87} See Mark Hassall, \textit{Ibid}. 685~686. According to Mark Hassall, “It was only when the security of the frontiers broke down in the course of the third century AD, coupled with the collapse of the economy, that in some areas sectional interests drove the provincials to revolt. And even when this did happen, the rebellions were almost invariably attempts to gain a more favoured place in comparison with other regions, rather than to break away from the Empire.”
As historically demonstrated above, for the success of empire’s long-term prosperity, not only tolerance but also a common political identity is needed. Amy Chua often calls it “Glue” or “ideological Glue.” We cannot easily find any counterevidence in world history against Chua’s thesis. I will also argue that a certain kind of “Glue” is necessary in order for an empire to be successful, but I contend that it is not a “common political identity” but the “Rule of Law” that can provide the necessary “Glue” in the following chapter.

IV. Rule of Law as Ideological Glue

1. Two core requirements of rule of law

While many scholars define the “rule of law” in many different ways, they generally agree that it should be distinguished from “rule by men”, in which personalities matter most. Legal academics both in the East and the West and in both the past and present tend to agree that the core requirements of rule of law are as follows: first, the ruler must be subject to, or at least not above, the law (der Primat des Rechts gegenüber der Politik)\(^88\); and second, the law must be applied equally, or at least equitably, to all members of society. Other possible criteria include: rationality, publicity, fixity, stability, consistency, universality, separation of powers, constitutionality, general applicability, prospective rather than retrospective, human rights, and right to access to a professional lawyer, an independent judiciary, enforceability, and lawmaking in accordance with procedural rules for it by an entity with authority to make laws.\(^89\) We shall encounter many of these features in various

\(^{88}\) Ernst Wolfgang Böckenförde, Recht, Staat, Freiheit, Frankfurt am Main: Suhrkamp, 1992, S. 168.

legal regimes, but I will regard them secondary to the above two core requirements. This is not only because they are subject to wider variation over space and greater change over time, but also because few, if any, historical polities have fully and consistently exhibited the core requirements of rule of law, let alone manifested any of the ancillary features.

2. Equal application of law as an ideological glue

The two core requirements of rule of law, especially the second requirement is interrelated with the political identity which Amy Chua calls “ideological Glue”. Citizenship refers to the legal status of imperial subjects, enables local subjects to belong to the imperial political communities and thus creates a common political identity through the entire empire. In this sense, citizenship is a kind of “legal construction of subjecthood.” Without the laws and legal policies that make all subjects both in central and peripheral parts of the empire equal, a political identity detailed rule of law conceptions, see Alvaro Santos, The World Bank’s Uses of the “Rule of Law” Promise in Economic Development, in: David M. Trubek & Alvaro Santos eds., The New Law and Economic Development: A Critical Approach, Cambridge Univ. Press, 2006, pp.256~266. He classified the rule of law criteria as follows. Institutional and instrumental version(Max Weber), institutional and intrinsic version(A.V. Dicey), substantive and instrumental version(Friedrich Hayek), finally substantive and intrinsic version(Amartya Sen). Institutional view is based on whether the rules comply with certain requirements that make law efficacious and indifferent about whether the actual contents of these rules are good or bad(Joseph Raz). In contrast, the substantive vision of rule of law requires that rules enshrine specific values. It requires the existence of specific rights which is inherent to such a system. This view does not distinguish between substantive justice and rule of law(Ronald Dworkin). According to instrumental conception, the rule of law is an effective means to achieve whatever goals a society has set for itself. In this view, a society may want to override the rule of law because of other values deemed of higher importance, such as national emergency or substantive justice(Duncan Kennedy). But the intrinsic view considers rule of law as a goal itself and enshrines the greatest values that societies can aspire to, such as justice, democracy, or freedom. See Alvaro Santos, Ibid.

90 Lauren Benton, Ibid., p.179.

91 The basic pattern of Roman law and its most fundamental principles were established during the Republic, but it was under the Empire that Roman law is generally thought to have reached its peak, and thus the second century and the first half of the third century is a period named by scholars as the Classical period of Roman law. Elizabeth Green, Law, and the Legal System in the Principate, in: John Wacher ed., The Roman World, Vol. I, London & New York: Routledge & Kegan Paul, 1987, p.440.
can not be created. According to this core definition, then, the rule of law plays an important role in the formation of a political identity for a successful empire. That is to say, the core force of the rule of law is its ability to create a common political identity. Consequently in order to gain a more accurate picture of the fundamental causes and the mechanism behind the “rise and fall” of empires, it is necessary to focus on the rule of law itself, rather than on its by-product – that is, Chua’s conception of political identity. This is my new thesis in this paper.

In the following chapter, I shall adduce the necessary evidence to support my thesis from a historical case study of East Asia.

V. Rule of Law during East Asia’s Imperial Age

1. Tang China

1) China’s golden age

For two and a half millennia from the Persian Empire, every hyperpower in history has dealt with the same two formidable challenges: firstly, maintaining the tolerance that fueled its rise, and secondly creating common bonds capable of securing loyalty or at the very least quiescence among the conquered subjects. In this regard, historically there has only been one hyperpower in East Asia. It was the Tang

92 Of course, I admit that there are extra-legal constituent of citizenship. The “print culture” such as newspapers gives subjects the right to monitor the state and potentials for citizen activities and the “club life” such as assembly room, tea room and pleasure gardens is the crucial factor in definition of citizenship. See Kathleen Wilson, Citizenship, empire, and modernity in the English provinces, c. 1720~90, in: Catherine Hall, Cultures of Empire: Colonizers in Britain and the Empire in the 19th and 20th Centuries, Manchester Univ. Press, 2000, pp.161~167.

93 For example, in Rome, the spread of Roman citizenship was a kind of legal policy for rule of law and it was a literally “legal process”. See Adrian N. Sherwin-White, The Roman Citizenship: A survey of its development into a world franchise, in: Hildegarde Temporini hg., Aufstieg und Niedergang der römischen Welt, Berlin & New York: W. de Gruyter, 1972, pp.23~25.
dynasty of China. In contrast, Imperial Japan was not hyperpower, but just an empire. The Japanese were ethnocentric and pursued racist rather than tolerant policies.

The Qin or Ming dynasty is perhaps the best known Chinese dynasty to most westerners and non-Chinese. But for most of Chinese around the world, the Tang dynasty represents China’s golden age.\textsuperscript{94} Compared to its every other contemporary rival empires, such as the powerful Arab caliphates, the Tang dynasty controlled a much larger population. The Tang was also more open, cosmopolitan, and ethnically and religiously tolerant than any other empire of its time, or any other period in Chinese history. Under the Tang dynasty, China achieved an era of great prosperity as seen in the period’s cultural grandeur, aristocratic sophistication, military power, and supremacy in foreign relations. The capital of Tang, Chang-an, became the world’s largest and most brilliant cosmopolitan city,\textsuperscript{95} a mecca to which traders, diplomats, and seekers of culture traveled from Japan, Korea, Central Asia, Vietnam, and South China Sea, and where Arabs, Persians, Jews, and Christians from Mediterranean basin were welcomed. In its heyday, Tang China starkly surpassed all other rival powers around the world in population, wealth, and total military might. In fact, the Tang’s achievement were the models to which all subsequent Chinese dynasties claimed to aspire.\textsuperscript{96}

2) Chinese tradition maintaining a plural, unified society and the Tang code

Was there any kind of “Glue” in Tang China equivalent to the role citizenship played in Rome?

Traditionally, the Chinese dynasties employed tolerant policies to absorb non-Chinese barbarians such as the Turks, the Uighurs, and the Tibetans. The Chinese

\textsuperscript{94} Amy Chua, \textit{Ibid.}, p.61. I conformed this fact on a joint seminar between Sun Moon University and Shandong University at Wei Hai in 2008 summer vacation from a very famous chinese political history professor, “Ge Quan.” He said to me “Tang dynasty was the chinese golden age in the our history.”

\textsuperscript{95} See Tatsuhiko Seo, \textit{Chang-an City Planning}, Goldenbough, 2006(Korean translation by Jae Young Choi).

\textsuperscript{96} On these appraisal and perspective, see Charles O. Hucker, \textit{China’s Imperial Past}, Stanford Univ. Press, 1975, p.139.
maintained societal peace and stability by neither imposing a Chinese social system nor forcing Chinese civilization on non-Chinese subjects while indirectly governing them through a kind of subject province. Following this tradition, the Tang China carried out strategic policies of tolerance like the empires of Persia and Rome, and so never tried to impose a Chinese identity on its non-Chinese subjects. As a result, no common political, linguistic, or cultural “Glue” bound the “barbarians” and Chinese, throughout the sprawling Tang Empire together.

Then was a status similar to that of equal citizenship offered in the Tang Dynasty? Tang China had set a kind of subject province on the non-Chinese territory under its rule. It was the “Jimifuzhou (羁縻府州).” It had been the Chinese rigid tradition since the Chin and Han dynasty, to manage relations between the Chinese and non-Chinese people around them through this “Jimifuzhou” policy. The term “Ji (羁)” means a bridle for a horse and “mi (縻)” is that of a cow. By examining the root of these terminologies, we can conjecture that the Chinese government’s “Jimifuzhou” policy essentially treated non-Chinese groups like horses or cows. The policy was a means to control non-Chinese enemies and prevent uprisings and revolts. Basically, the “Jimifuzhou” policy was an indirect form of rule. The central government of the Tang dynasty would appoint a leader of local tribe to the top manager of “Jimifuzhou.” In addition, the “Jimifuzhou” had to observe the formalities of courtesy between the “ruler and ruled” and pay tribute to the Tang dynasty. By employing this policy, Tang China could rule the non-Chinese barbarians indirectly.

Remarkably, the emperors of the Tang did attempt to establish a universal empire in which Chinese and Barbarians were at least nominally equal. However, the political affiliation the Tang emperors offered their non-Chinese subjects was too weak to hold together the disparate groups, for example, Tibetans and Turks, Muslims and Zoroastrians, whom the Tang sought to govern. It was partly because

the political affiliation or alliance between Tang and other countries was not based on equal citizenship, but just based on the extension of relations of the “ruler and ruled” through the oath of devotion and allegiance to Tang’s emperor which is similar to Mongol Empire. That is to say, even the tolerant Tang China had not regarded the non-Chinese groups as a part of China and treated or could not treat the “Jimifuzhou” equally like the interior territory of China. For these reasons, there could not been created a kind of equal citizenship like Rome.

Tang China’s law also reflected these segregationist policies. The famous Tang Code was promulgated by Taizong’s legal advisors and later adopted, sometimes in its entirety, by subsequent dynasties, as well as by rulers in Korea, Japan, and Vietnam. Though the Code permitted transactions between Chinese and foreigners and the marriage between the two under the official permission, on paper it clearly proclaimed the segregation of Chinese and non-Chinese. Under the code, settlements of foreigners were generally limited and foreigners were not supposed to talk to Chinese unless they had business with them. Moreover, Chinese who married foreigners (化外人) without official permission were to be banished to a distance of 2,000 li (共為婚姻者，流二千里). For this reason, we can conclude that Tang China never created such a common political identity as the Rome had. In

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101 Roughly 400 miles. There are three degrees of exile punishment, 2,000 li, 2,500 li, and 3,000 li. See Korea Legislation Research Institute, *譯註 唐律疏議—名例編—*, 1994, p.103. “流刑三，二千里，二千五百里，三千里”.
102 See Korea Legislation Research Institute, *譯註 唐律疏議—各則 (上)—*, 1997, p.2090. But there were some exceptional cases which show that these provisions were not strictly enforced by Taizong for the purpose of the strategic tolerance policy.
other words, Tang China had not fully realized the political ideal of the “Rule of Law” in comparison with the Roman Empire.¹⁰³

In the end, as with Persian and Mongol Empire, the tolerance of the Tang rulers not based on the rule of law, eventually worked against them. As the Tang Empire reached its zenith, insurrections by non-Chinese peoples spread in all the frontier areas. Military commanders of foreign descent increasingly turned their back to the rule of Tang China.

2. Imperial Japan

1) The origin and spirit of the Japanese empire: ethnocentrism and intolerance

Unlike Tang China, Imperial Japan had no interest in winning the hearts and minds of its conquered populations. Instead, Imperial Japan’s goal was only to extract local resources, exploit native manpower, and eventually inhabit the conquered territory to relieve overcrowded Japan. Japan’s policies, based on the racism and ethnocentrism, were quintessentially intolerant. “As the master race”, the Japanese believed that they had a moral right and duty to exercise leadership within the Greater East Asia Co-Prosperity Sphere.

In Korea, for example, compulsory labor was practiced on a large scale. Roughly one million young Korean males were conscripted into bitter working at dangerous construction and coal mining sites. Thousands of young Korean females who promised “administrative positions”, but were later forced to service Japanese troops as “comfort women.” The Korean language was prohibited in public schools,

¹⁰³ This conclusion does not mean that the Roman Empire had ideally realized the rule of law. It is well known that Rome also had a discriminating factors in law and legal policy. But it is right that Rome was more successful in realizing the rule of law than any other hyperpowers such as Tang China, Persian Empire, Mongol Empire, or even more than the British Empire in some sense. In short, Rome was relatively successful empire in the rule of law than any other hyperpowers.
Korean surnames were replaced with Japanese ones, and Shinto worship was compulsory and enforced more rigorously in Korea than in Japan itself.\textsuperscript{104}

The policies of Imperial Japan seem to have been even harsher in Indonesia. During their occupation of Indonesia from 1942 to 1945, the Japanese displayed coercive cruelty and racial arrogance. For example, public slapping and caning of local subjects were everyday occurrences. Devout Muslims were required to recognize the Japanese emperor’s divinity, in direct violation of their own faith. Involuntary forced labor was colossal in scale and unspeakably harsh: several million Indonesians were put to work in backbreaking conditions resulting in hundreds of thousands of death.

Imperial Japanese policies in other South Asian countries including Thailand, Burma and Singapore were also similar in nature. Not surprisingly, the response to such dreadful atrocities in the occupied territories was a deep-rooted aversion to the Japanese. The negative sentiment was so strong that it persists in many parts of Asia even to the present day. Indeed, the potency of intolerance is undeniable. “There may be no force on earth so vitalizing, so identity-creating, so war triggering as racist nationalism, but such intolerance policies that make these ideologies so ferociously mobilizing also set the limits on their reach.”\textsuperscript{105} In conclusion, Japan could grow into an empire through its policy of intolerance based on racial arrogance but could not evolve into a hyperpower mainly because of the intolerant nature of the policy itself.

2) Failure of rule of law: discriminatory legal policy

Generally it is well known that Japanese legal policies were extremely discriminatory. The Korean people under Japanese rule acquired Japanese


\textsuperscript{105} Amy Chua, \textit{Ibid.}, p.284.
nationality by the annexation of territories,\textsuperscript{106} and from the very outset of her dominion over Korea, Japan stressed the racial and cultural affinity between the two nations(namely the assimilation policy, that is, Japanization of Koreans) and the impartial benevolence of their emperor toward all his subjects.\textsuperscript{107} However, Imperial Japan adopted policies that discriminated against Koreans by distinguishing between the “interior territory”, that is the Japanese homeland, from the “external land”, that is the Korea.\textsuperscript{108} Discrimination by law, by administrative actions, or in personal relations was rampant, and the Koreans suffered from political disability, personal abuse and indignity.\textsuperscript{109} For example, Koreans never got the right to vote by the time “Liberation” under Japanese rule. In addition, criminal laws were applied unequally to Koreans and the Japanese. Punishments were harsher was more strengthen and the criteria of punishment was also more extended in Korea than those in Japan. As an example, a special law was applied that allowed summary justice by which the policemen could decide cases. During this period, there were many human rights abuses and cases of torture were commonplace. Though there was “Rule by Law”, there was no “Rule of Law” in the human rights sense in Korea under Imperial


\textsuperscript{107} Han-Kyo Kim, \textit{Ibid.}, p.224.

\textsuperscript{108} Though it seems that Korean nationality was changed by the Treaty regarding the Annexation of Korea to the Empire of Japan(1910.8.22), but the Article II of the Treaty regarding Basic Relation between Korea and Japan(1965.12.28) clearly says “It is confirmed that all treaties of agreements concluded between the Empire of Korea and the Empire of Japan on or before August 22, 1910 are already null and void”. But the official interpretation of Japanese government about the Article II is that “the term ‘already’ means the time 1948.8.15 that is Korean Liberation Day”. See Shigeru Oda, The Normalization of Relations between Japan and the Republic of Korea, \textit{American Journal of International Law}, vol. 61, 1967, pp.40~41.

\textsuperscript{109} Han-Kyo Kim, \textit{Ibid.}, p.226.
Japan. We can find no evidence that Imperial Japan succeeded in creating a common political identity which could bind the entire empire together. Despite her assimilation efforts, in reality, Japanese policies fell far short of the goal of assimilation. In other words, Imperial Japan failed to implement the “Rule of Law” in the genuine sense of the term. The Japanese case clarifies the need to focus on not the political identity but the rule of law itself as an ideological glue. Imperial Japan gave Koreans Japanese nationality which in the formal or nominal sense provides a unified political identity, but as we have seen above, the real common political identity had not been created in Korea under Japanese rule. The reason is clear. Imperial Japan could not create a common political identity in Korea in spite of extending nationality because it employed discriminatory legal policies in Korea. In short, Japanese imperial rule of law lacked the core constituent of “Rule of Law.”

3. Summary: The similarities and differences of Tang China and Imperial Japan

As we have seen above, Tang China as well as Imperial Japan failed in terms of creating “Rule of Law.” However, the differences between the two empires highlight important lessons. In Tang China, strong tolerant policies were adopted and thus the empire prospered for about 300 years. Imperial Japan, on the other hand, adopted extremely discriminatory policies, and so it did not even last a hundred years and had actually started to decline within just 50 years from its beginning. Let’s compare this with the longevity of the Roman Empire, that is, over a thousand years! Through “Tolerance” and “Rule of Law”, the Empire was able to prosper for so long a period.

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111 Han-Kyo Kim, Ibid., p.226.
How about Persia? The Persian empire which implemented policies of tolerance without “Rule of Law” only survived for roughly 200 years. This period is similar to the longevity of the Mongol Empire which was also tolerant but had not succeeded in creating “Rule of Law” like the Persian Empire or the Tang dynasty. Though the British Empire stressed tolerance, enlightenment, and the common law, it could not overcome its own racism and thus eventually failed in terms of “Rule of Law.” Thus, the British Empire prospered only a little over 200 years since 1689 when the Act of Toleration was passed. From these facts, we can learn historical lessons. Tolerance policies together with “Rule of Law” tend to bring long prosperity to empires. However, compared to this combination, tolerance policies without “Rule of Law” are not enough to bring long-term prosperity compared to the combination of the two. Most of all, intolerance policies without “Rule of Law” is the worst combination for the success of an empire. The cases of Tang China and Imperial Japan in East Asia historically demonstrate this conclusion.

This is my new thesis on the relation between “Tolerance and Rule of Law” and “Prosperity.” In other words, my thesis is a “Rule of Law” version of Chua’s “Day of Empire.” However, most importantly, on Amy Chua’s thesis about factors influencing the prosperity of empires, I argue that an important component, “rule of law” is missing in her analysis.

VI. Conclusion

1. Virtue of tolerance and rule of law

Is “Tolerance and Rule of Law” necessary for the prosperity of not only empires but also for nation-states, or even a relatively small community such as a local government, a corporation, a government department, or even a university? I think it

113 See Niall Ferguson, Ibid., p.XXV.
may be undoubtedly so. I argue such lessons can be extended because if a society’s members are diverse, the size of the community, whether it be an empire or university does not matter. If a society aspires to integrate its disparate people, citizens, members, it must provide the “Tolerance and Rule of Law.”

Since the 1990s, it has been argued that the value of rule of law is not only confined to the sphere of human rights, but also belongs to the sphere of economic prosperity. For example, Randall Peerenboom asserts that implementation of rule of law is necessary for sustained economic development and provides several empirical evidences assessing them cautiously.\(^{114}\) Recently in Korea, Cheol Park argued in detail that the rule of law is a condition for economic development.\(^{115}\) In addition, the relationship between rule of law and economic development has been proven recently by several researches to be in direct proportion.\(^{116}\) In short, rule of law may be a condition for economic prosperity of a society.\(^{117}\) However, relatively it has been overlooked, in contrast, that rule of law can function as the ideological and political “Glue” for social integrity and thus contribute to the prosperity from not only economic but also political perspectives.\(^{118}\)

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\(^{117}\) Maybe these kind of arguments are derived from the thought of Hayek that the rule of law is a system that articulates a free market economy. For Hayek, whereas under the rule of law there is a permanent framework of rules within which individual decisions guide the productive activity, under arbitrary government a central authority directs the economy. See Friedrich Hayek, *The Road to Serfdom*, Univ. of Chicago Press, 1944, p.80~96.

\(^{118}\) Though not exactly same, Amartya Sen has a theoretical view similar to mine. He argues that legal development is a constitutive part of the development process. According to him, development as a whole is an amalgam of developments in the distinct economic, legal, political, and social domains. The
2. Implications for Korea

I think the historical lessons of the rise and fall of world-dominant empires have close and significant implication for today’s nation-states such as Korea. Though Korea is ethnically homogeneous, the country has also cultural, local, religious, and even ideological diversity within it’s territory. Therefore in order for Korean peninsula to be united, prosper and develop into an advanced and leading country in East Asia or in the world, the Korean government may need to employ tolerant policies which unify the different cultures, regional traits, diverse religions, and most importantly ideological dispute between the South and the North. In addition, in order to form a closely unified political identity within the nation and thus create a loyalty to Korea, irrespective of social positions or classes, religions, academic cliques, and regional connections, a political ideal “Rule of Law” in the core sense must be fully realized. Unfortunately, according to “Rule of Law” Index reported annually by Word Bank from 1996 to 2007, the Korea’s average score was roughly 75 points. This is ten points lower on average than the scores of the United States, Japan, Singapore, Germany, etc.\textsuperscript{119} Korea’s present “Rule of Law” standing is a crucial point is not that legal development causally influences development as a whole but rather than development as a whole cannot be considered separately from legal development. Shortly speaking, development in each domain is interrelated to the other domains. See Amartya Sen, \textit{What is the role of legal and judicial reform in economic development?}, p.8\textit{(Lecture delivered at the first World Bank conference on Comprehensive Legal and Judicial Development, Washington DC, June 5, 2000). See generally Amartya Sen, Development and Freedom, New York: Anchor Books, 1999.} \textsuperscript{119} As for this statistics in detail, see Country Data Report for Korea, South, 1996~2007 and World Governance Indicators for 1996~2007, Research at the World Bank. Rule of Law Index measures the perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence. Rule of Law Index consists of such factors as losses and costs of crime, enforceability of contract, violent or organized crime, fairness of judicial process, the independent judiciary from political influence of members of government, citizens or firms, quality of police, legal framework to challenge the legality of government actions, protection of financial asset, and running of the justice system, etc.
What is the condition that can make an empire socially and politically integrated and thus prosper for a long time? It is not easy to answer quickly for this question. This paper analyzes the book “Day of Empire” written by Amy Chua three years ago which submitted an answer for this question. The core thesis of “Day of Empire” is that every world-dominant empire was by the standards of its time, extraordinarily pluralistic and tolerant during its rise to preeminence for all their enormous differences. According to Amy Chua, “indeed, in every case tolerance was indispensable to the achievement of global hegemony and the decline of hyperpower has repeatedly coincided with intolerance, xenophobia, and calls for racial, religious, or ethnic purity”. Here is another core thesis: “It was also tolerance that sowed the seeds of decline. In every case, tolerance without a common political identity which she calls strong ideological “Glue” that bound the empire together eventually hit a tipping point, triggering conflict, hatred, and violence.” This paper is designed to examine a thesis of that book, and thus ultimately refute partly and complement the thesis comparing with the East Asian history and legal culture. In this paper, I shall examine her thesis that “Tolerance is a key condition of hyperpower” and, “Tolerance without overarching political identity sowed the seeds of decline.” However, I do not agree with her view that the strong ideological “Glue” that binds a whole empire together is the common political identity created by citizenship.
Instead, I believe it is the “rule of law” and will argue this point by examining historical case studies of East Asian imperial rule of law, specifically during the governance of Tang China and Imperial Japan. Moreover, I argue such lessons can be extended to nation-states, or even a relatively small community such as a local government, a corporation, a government department, or even a university because if a society’s members are diverse, the size of the community, whether it be an empire or university does not matter. If a society aspires to integrate its disparate people, citizens, members, it must provide the “tolerance and rule of law.”