1. Sovereignty, Territory and People
By looking at international law from a spatial perspective it is easy to affirm that in the XIXth century international law was still far to be identified with an universal positive law. As a matter of fact, due to its historical dimension, it could be deemed to be exclusively the law of those populations that shared a common past and common values, and that followed the same Christian religion. On a political and legal level that meant that only the Western States were the legitimate producers of international law and that the ‘modern’ international law was based on the legal relationships between states recognizing themselves as sovereign legal subjects. On one hand sovereignty was a necessary element of the State and, on the other hand, it could be thought only in connection with a territory and a population that lived in it. As the German doctrine pointed out during the second half of XIXth century the concept of people identified itself with the State, its institutional existence was possible only within the State and as an object of its imperium. At the same time while the territory existed only as element of spatial qualification of State sovereignty, the State could not be conceived without its own territory within which it exercised its power in an absolute and exclusive way.

However, if sovereignty, as Bluntschli wrote in his handbook of international law, once applied to a State territory could be defined as territorial sovereignty (Gebiethoheit), which kind of right does the State have on its own territory? Which kind of legal relationship does link State and territory?

Moving from the realm of private law, jurists such as Bluntschli, Gerber and later Laband, who were influenced by the methodological renewal of Savigny and involved in the great project of legal construction of the German State from a organicistic point of view, had no doubt: the territory not only was an essential element for the life of the State but it was also the object of a

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1 Luigi Nuzzo, Origini di una scienza. Diritto internazionale e colonialismo nel XIX secolo, Frankfurt am Main, 2012.
staatsrechtlichen Staatsrechts. «Die Gebietshoheit gehört dem öffentlichen, wie das Eigentum dem Privatrecht an», and as well as it is fixed by the right of property in the private law, the State had a full and exclusive dominium on its territory. Critical voices were not lacking. Just two years after the publication of the Grundzüge of Gerber, Carl Victor von Fricker in his public discourse held at the University of Tübingen in honor of Karl von Württenberg affirmed that «alle Vorstellungen von einer Rolle des Staatsgebiets als sachlichen Objects des Staates sind falsch oder schiefs». According to Fricker any analogy with private law was no longer possible. The relationship between res and owner was completely different from the relationship between territory and State. As matter of fact there was a profound difference between the human relationships with the property of a thing and the State relationships concerning a territory. The State imperium was not a projection of the concept of dominium in the field of public law. Consequently it was no more possible to consider the territory as a thing on which the State had a real right (ius in re). As a matter of fact if the territory was correctly qualified as a necessary element of the State, it couldn't be contemporaneously a simple object. The territory was the State. By identifying itself with the State, it spatially qualified the sphere of the State sovereignty and worked as a medium for the identification of State and Volk and for the exercise of its imperium over the people living within. As Fricker remarked territory was «ein Moment in Wesen des Staats, seine räumliche Undurchdringlichkeit» (p. 17).

The theory of Fricker was successful. In Germany, despite the criticisms of the international lawyers seduced by positivism and intolerant toward the organicism of the old Staatslehre, his ideas were taken up and developed by stars of public law as Preuss and Jellinek, while in Italy his taught was revived by Santi Romano and was used in the process of transformation of liberal Rule of Law into administrative State.

Obviously it is not my aim to reconstruct the rich doctrinal German and Italian debate about the relationship between State and territory and the nature of the State’s right over the territory. These short reflections are the starting point for an analysis of the construction process of the non-Western space. By linking sovereignty, territory and peole the European public lawyers were able to represent the statal space as an homogeneous and pacified space. They, moreover, entrusted the international lawyers with the hard task to coordinate the different spatialities of the Western States, finding an objective principle that could hold back the will of the States. According to its historical dimension, in the middle of the XIXth century international law could

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4 Johann Caspar Bluntschi, Das moderne Völkerrecht der civilisirten Staaten als Rechtsbuch dargestellt, Nördlingen, Beck, 1868, p. 164.
5 Carl Victor von Fricker, Vom Staatsgebiet, Tübingen, Ludwig Friedrich Fues, 1867, p. 17.
not be consider just as an äussere Staatsrecht, neither it could be reduced to mere diplomatic practice. On the contrary it was a law ruled by public opinion and subjected to the judgment of history. Its origins dated back to the state of necessity that pre-existed the States building and presupposed the existence of a international community that shared the same religion and values. The former dimension of necessity from which international law descended, made the resort to a formal sanction useless. At the same time it imposed, as conditions of access and permanence, few and simple rules of civilisation. Finding in the international community the necessary principle from which it was possible to reconstruct and represent the international law in an organic way, compelled the international lawyers to interrogate themselves about the spatial dimension of the international community and about the sphere of effectiveness of its law. The international law was a Christian and European law. It originated from the meeting of three different elements: the Catholic Church, feudalism and crusades, Roman law. After the Reformation, the principle of territorial sovereignty and equality between the States provided this law with a new base and allowed the creation of a common legal moral and economic space. International law created and defended its boundaries by referring to a common legal consciousness and to an increasingly strong sense of belonging to a cohesive community. It also used the filter of Christianity for the evaluation of the degree of the civilization of a nation.

In the following years the selected international lawyers of the Institut de droit international reintroduced the image of an international law that was not directly related to the sovereignty of the single States, locating its foundation in the legal conscience of the civilized and Christian nations and claiming the exclusivity of its interpretation. In the same way the relevance acquired by the concept of civilization didn’t produce automatically deep changes within the discourse of international law. On one hand it contributed with its opposite, the concept of savagery, to the process of construction and self-representation of Western identity. On the other hand toward the end of century, it made possible new and deeper relations between peoples and it spread an awareness that the satisfaction of national interests meant the reinforcement of trade, the creation of a network of mutual dependencies and finally the realization of the economic interests of the community. The international society of the European civil and

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Christian States, was now also an «Interessengemeinschaft» based on the objective principle of solidarity of interests and open to those who recognize or adapt to its moral, religious, legal, political and economic standards\textsuperscript{10}.

2. Towards East

The State invented by the public lawyers of the XIXth century was not only the unit of measure of the Western spatiality and the only legitimized producer of international law, but also it was the filter through which it was possible to look to non-Western political subjects and evaluating their level of civilization. The process of evaluation was performed on an international level as well as on national one. In the first case it was necessary to satisfy the principle of reciprocity, conforming one own actions to the laws and practice of (Western) international community. In the second case a sufficient level of civilization required a full exercise of sovereignty over one country own territory and population, abolition of slavery and the guarantee of some fundamental rights (first of all life, liberty, property) also to foreigners.

According to these criteria international lawyers considered non-Western States like Turkey, China Japan not fully civilized and did not recognize them as subjects of the international law. Their backwardness, due, first of all, to historical reasons was still difficult to overcome. Once again, international law was a product of European Christendom whose goals, free trade and the community of nations, had been realized thanks to the sense of brotherhood inspired by Christianity\textsuperscript{11}. The lack in the Eastern peoples of any Christian openness towards the neighbours produced isolation and rejection of the Other and consequently the absence of any form of international trade. Legislative «anomalie», legal processes not able to guarantee legal certainty and the protection of the defendant as well as different cultural traditions equally distant from Western sensibilities had deepened the differences and sharpened the distrust of Europe and United States toward a world they did not know and they could hardly understand. A general transfer of the whole Western legal system, therefore, not only seemed impractical to international lawyers but could not have been realized in a uniform manner in all the Eastern countries. Because of the profound differences existing between each State the construction of international relations on a plane of perfect equality and reciprocity had to be subjected to a careful examination of its welfare State, its forms of government, its legal and judicial system and its religion\textsuperscript{12}.

\textsuperscript{11} David Dudley Field, \textit{De la possibilité d’appliquer le droit international européen aux nations Orientales}, in «Revue du droit international et législation comparée», 7 (1875), pp. 659-668.
\textsuperscript{12} A. Krauel, \textit{Applicabilité du droit des gens européen à la Chine}, in «Revue du droit international et de législation comparée», 9 (1877), pp. 387-401.
Thus, what could be done?

On a theoretical level international lawyers recovered the old natural law. Based on universal principles of the Christian West, and asking for humanity as minimum condition of participation, it had still a universal dimension that international positive law could not hold, and it was able to recompose in a global legal order the differences produced by Christianity and civilization.

At the same time, with a “little help” from diplomacy, they found in the consular law the best instrument to protect Western economic interests and to re-territorialize the Eastern space without breaking the representation of a positive international law.

As a matter of fact the treaties signed with Eastern States during the XIXth century and the political debate that was associated with their stipulation imposed to legal doctrine to acknowledge the transformations that took place in the field of the international relations. They also give to us important informations about the difficulties that international lawyers engaged in the creation of a system of international law, met in in their attempt to reconcile, diplomatic practice and scientific reflection.

The treaties signed between Ottoman empire, China and the Western Powers represents a good examples\(^{13}\). Starting with the well known treaty of Paris of 1856, the Ottoman empire was admitted «to participate to the benefit of the public law and Concert of Europe» and the signatories’ powers (France, England, Prussia, Austria, Russia, Kingdom of Sardinia) committed themselves «to respect the territorial integrity of the Ottoman Empire». As recently underlined by legal historiography this cannot be deemed to be the first sign of the process of overcoming of the old Christian international law and of the introduction of a universal international law that was founded on the idea of civilization and that was opened up to a Muslim nation for the first time\(^{14}\). Turkey was part of the European political system, but its different level of civilization and its religious differences excluded it from the select circle of the nations that produced international laws and justified, with regard to Ottoman empire, the suspension of its fundamental principles. The necessity to protect the Christian minorities inside the Ottoman Empire and the impossibility of leaving the Western citizens to the ‘arbitrary acts’ of its justice justified the compression of Turkish sovereignty and the introduction of a new legal regime that the international lawyers defined as exceptional. It was indeed a paradoxical situation: a new feeling of universalism and humanitarianism led the international lawyers to desire an broader

\(^{13}\) For a comparative analysis s. Turan Kayaoğlǔ, Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China, Cambridge University Press, Cambridge 2010.

\(^{14}\) Traité de Paix signé à Paris le 30 mars 1856, Turin, Imprimerie Royale, 1856, art. 7. S. Nuzzo, Origini di una scienza, cit. pp. 52-66; 61-77; and now broadly Eliana Augusti, Questioni di Oriente. Europa e impero ottomano nel diritto internazionale dell’Ottocento, Napoli, Edizioni Scientifiche Italiane, 2013.
application of international law, so as to be able to go beyond the Christian West, but also to limit the internal sovereignty of Eastern States in defence of the Western economic interests and the Christian minorities. This set of circumstances legitimated, in the first case, the application of consular law, and, in the second case a military intervention. In both cases it was an exceptional answer where the victim was the same: the principle of territorial sovereignty. The deficit of Christianity (and therefore of civilization) that marked the legal and political life in Turkey imposed to diplomats and international lawyers to break the relationship between sovereignty, subjects and territory. This allowed for spaces and subjects within the Ottoman territory to be placed outside its imperium. Outside the borders of Western States the efficacy of the principle of legal territorial sovereignty faded away. In this way «l’intégrité territoriale de l’Empire Ottoman» as well as its Christian principalities was entrusted to the guarantee of the European Concert.

In the same years in which the European powers intervened in the Middle East to rescue the Ottoman Empire, admitting it to participate to the benefits of the ius publicum europaeum Great Britain annihilated the attempts of the China to prevent opium import in its own territory, imposing the stabilization of their diplomatic relations and forcing in the opening of its huge market to Western commercial interests. In 1842, in fact, with the Treaty of Peace and Friendship of Nanking that put an end the end of the so-called First Opium War (1839-1842), England ensured the right to conduct business without the exorbitant and arbitrary intermediary of the merchant guild of Hong Co as well as a reasonable indemnity for the costs of war and the drug loss; the settlement of Hong Kong and the opening of five ports (Guangzhou, Fuzhou, Ningbo, Xiamen, Shanghai) to English commerce with the right of residence for British subjects and their families; the presence in each of them of a consul; reliable and fair customs taxes, and finally the recognition of a «perfect equality» between the Chinese emperor and the English Queen\(^\text{15}\). The following year a new agreement (The Supplementary Treaty) signed in Hu-men-chai by Henry Pottinger and Qi-ying, supplemented the Treaty of Nanking, allowing Britain to gain further advantages. It introduced the most favored nation clause, by which the privileges and immunities that China would be granted in the future to other foreign countries were to be considered automatically extended to the United Kingdom toghether with the application of the principle extraterritoriality\(^\text{16}\).


The treaties that the Celestial Empire signed in 1844, in Wanghia (Wangxia) and Whampoa (Huangpu), with the United States of America and France were also characterised by the same trade privileges and the compression of Chinese sovereignty characterize also. The two Western powers, represented respectively by Caleb Cushing and Théodore MM J. de Lagrene, however, not only assumed the Anglo Chinese agreements as a model, but they also succeeded to get further benefits, being able to better regulating the competences of the consuls and the operational mode of the principle of extraterritoriality. The American and French consuls were required to supervise and regulate everything concerning American and French citizens living in the five ports. This meant to transform the territory assigned to them in a new social space. Urbanistically it meant to proceed with their requalification, buying in the name of their respective governments the land required for the construction of warehouses, hospitals, churches, cemeteries; and also to mediate between western merchants in search of land and buildings to buy and Chinesees interested in doing business with the newcomers (Wanghia, art. 17; Whampoa, art. 22). From a legal point, the Westernization of the new territories was possible, on the one hand, by overcoming Chinese sovereignty and by the rigorous application of the principle of legal personality in criminal proceedings (Wanghia, art. 21; Whampoa, art. 27); on the other hand through the use of equitable remedies and alternative forms of administration of justice that, however, emphasized the superiority of the consular judiciary (Wanghia, art. 16; 24; Whampoa, art. 10, 25).

In 1858, at the end of the Second Opium’s War, China signed new treaties with the allied powers France and Great Britain as well as with Russia and the United States which formally did not take part to that war.

With these treaties the Western powers revisited previous agreements, obtaining a wider protection of their economic interests, new treaty ports, the right of free commerce and navigation along the Yangzi and the possibility to travel within China. They moreover forced Cine to accept the presence of Christian missionaries, imposing the duty to protect their missionary activity (art. 8) and the right to establish diplomatic delegations in Beijing (artt. 2; 3). It was a goal pursued by Western powers for a long time that would lead, according to the British plenipotentiary James Bruce, Earl of Elgin, to overcome the mediation of the provincial
authorities in dealing with the emperor, thus simplifying and facilitating relationships. This would have pushed China to fully participate in the international legal and political system.

But times were not ripe. The Celestial Empire was yet not a ‘civilized’ state. The same treaties that were supposed to facilitate its entry into the international community, prevented the achievement of this very objective. They hampered Chinese sovereignty more than how it was already been done by the previous agreements China was forced to sign. The possibility for Western diplomacy to open its diplomatic offices in Beijing and to deal directly with the emperor, the right of merchants and missionaries to travel inside the interior of the vast empire, together with the increasingly broader competences of consular jurisdiction constituted a serious violation of Chinese sovereignty over its own territory, which is incompatible with the images of State or nation that the Western legal doctrine was constructing in those same years.

It was necessary to rethink the relationship between sovereignty, territory and subjects, admitting that outside the boundaries of the Christian West, the principle of territoriality of a sovereign state, a modern conquest of the European nations, could not still have an unconditional application. Since it was not acceptable to leave the Western citizens to the abuses of an unreliable judiciary, it became necessary to limit the sovereignty of the Eastern States. An old legal fiction, the one of extraterritoriality, enabled the Western diplomacy to achieve this goal. Viewed with suspicion by the international lawyers, outside Western territorial boundaries, it became a fundamental legal principle of a new colonial order. It allowed to de-territorialize Western citizens that founded themselves in Eastern countries, freeing them from the imperium of the local authority and entrusting them to their own consular courts.

Then, the impossibility to fulfil the (Western) standards of civilization, because the irreducibility of the cultures differences, legitimized, once again, the suspension of the fundamental principles of international law and the emergence of an exceptional regime founded on the consular authority and on the principle of extraterritoriality. Outside the borders of Christendom the necessity, and «the force of things» imposed to broaden the powers and privileges that were normally accorded to consuls. They were really public ministers and enjoyed all the prerogatives of diplomatic agents: judicial immunity, inviolability, rights provided by the diplomatic ceremonial, tax and customs exemptions, a body of troops, and mainly, a «exceptional»

jurisdictional competence. As matter of fact, the exceptional prerogatives enjoyed by the consuls in East reflected an exceptionality inherent to the same consular law. searching for a difficult compromise between a universal international law, based on morality, and a positive international law, expression of a the common Christian conscience of the civilized states (and thus only applicable to them), the consular law seemed a good tool to regulate relations between State and those political entities that were considered to be at lower level of civilization, while at the same time not hampering the scientific representation of international law as a positive law with a universalistic appeal.

The whole non-Western world, in different forms and degrees, was exceptional as were exceptional the constructions designed by the legal science and practice in order to understand that reality. In both cases, human beings and texts were physically moved from the West to the East and then to Africa and Western legal concepts were incorporated into non-European contexts. At the same time the legal transplants were the result of discursive strategies that imposed the direction, making their content opaque and defining their limits. It was a multiplicity of shared representations founded on widespread and resistant stereotypes able to create a reality that was different from what they imagined to describe and capable to produce a self-consciousness based on the idea of superiority of Western legal and political structures and on a negative dialectic of the recognition. So these legal translations did not transfer something that was already existing, but they produced betrayals, adaptations and profound changes. Furthermore they were not only horizontal (and unidirectional), internal to the same temporal dimension, moving of people and texts from the West to the East and then to the African colonies, but were also vertical. The European lawyers moved freely through time, using for the interpretation of the colonial reality legal categories of the old regime and rediscovering outside the Western borders the centrality of the executive power now incompatible with the separation of powers of the Rule of Law. It was a complex operation that can be found in the early twentieth century and shows surprising similarities with other ‘borderline’ cases (as the state of siege, the state of exception, the international emergency, or the military occupation). In these hypothesis, the resistance of legal order seemed to be assured only through the suspension of the guarantees of the Rule of Law.

The exceptionality of the non-Western World produced a temporal displacement. It seemed to exist in a different time period than the one of the metropolis, in a period that could be compared with that of the European Ancient Regime. Juridical modernity resurrected pre-modernity and,

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20 August von Bulmerincq, Consularrecht, in Franz von Holtzendorff (Hrsg.), Handbuch des Völkerrechts, Bd. 3, Die Staatsverträge und die internationalen Magistraturen, 1887, pp. 723-727.
citing the temporal difference between the centre and the periphery, defined the latter as different. It appeared as a remnant of the past or a remote realm which could be penetrated by the advantageous effects of the modern era and could become an object of its myths. However the history of the colony had yet to begin or had begun in precisely the same moment that European colonization started. Through this temporal disconnection, it was possible to maintain a unified concept of the legal order. It permitted the co-existence of the exceptionality of consular and colonial law, on one hand, and of the Rule of Law of the metropolis, on the other hand, and it thereby created a unique cross-temporal unity between the pre-modern past of Christian Europe and the colonial present.

The entrance of China into the “family of nations”, therefore, was possible by suspending the application of international law and by devolving the relations between Western States and the Celestial Empire to diplomatic practice and to consular law. China still had limited legal subjectivity. It lived in an exceptional condition that preventing it from participating in the production of international law justified the application of exceptional measures. It was a country with limited sovereignty in which the modern principle of legal territoriality was replaced by the pre-modern principle of legal personality. A part from Christianity, whose missionary activity has been largely tolerated in China, the Middle Kingdom did not reach a sufficient level of civilization, that would have allowed it stand on equal footing with the United States and the European powers. In the meantime diplomacy, since the 1840s, allowed China to enjoy the (poisoned) fruits of the Christian international law, projecting into the East the system of capitulations to which the Muslim countries had been subjected from the previous century.

3. A New Social Space

In recent years the international lawyers went back to study the so called “unequal” treaties, producing interesting works focused on the Western representations of Chinese law, its jurisdictions or dealt with the position of China in the international legal order. However, although we can find new researches that analyzes the colonization of China also from a legal historical perspective, jurists and legal historians continue to elude foreign concessions, particularly the one of Tianjin. At the same time, the renewed interest of sinologists towards the Western concessions has not been accompanied by an awareness of the importance of the legal dimension both for conquest and administration of Chinese territory, and for the construction of the legal relations with the local populace.

On the contrary, on the one hand, legal texts and juridical paradigms played an important role also in the Chinese colonial discourse. Jurists, colonial administrators, military authorities
bridled spaces and subjectivities in a textual network of laws and regulations, constructing new spaces and producing new social life. As a matter of fact, by fixing the stereotypes of Chinese otherness they formed Chinese subjectivity, while at the same time, normalizing it and naturalizing the racial and cultural differences that marked the stereotypes themselves. In this way China and its populations were represented as different on the basis of cultural and historical diversity, in order to justify Western presence and the compression of Chinese sovereignty. On the other hand, I think that the best way to try to understand these related processes of construction of space and production of subjectivity is to choose a single place. This should be a place with its own characteristics and its own memories, but also a place that at the same time may be considered as a model for reading the Western theoretical discussions on the exceptionality of non-Western spaces and their populations (and obviously the solutions offered by international lawyers) and to understand the political and legal transformation in China in the first half of the XXth Century.

Tianjin is for me a territorial unity in which West and East, identity and difference, past and present, inclusion and exclusion are indissolubly intertwined. By looking at Tianjin it becomes possible to ‘spatialize’ historical narratives, translating a theoretical model like the one so-called “space turn” into historiographical practice. This means to take a spatial perspective and to proceed inside it in order to reconstruct the complex network of relations between the legal, political, social, and economic spheres. At the same time, however, the assumption of a spatial approach is not only a methodological instrument of analysis, but its definition is an objective of the analysis itself. As already Emil Durkheim and Marcel Mauss stressed at the beginning of the last century space is not homogeneous, universal or constant. By Overcaming the classical representation of Newton and Cartesio as well as the Kantian identification of space and time as kinds of pure and a priori intuitions, they revealed its social dimension. Seventy years later this dimension of space was deeply stressed by Henry Lefebvre who analyzed, from a Marxist perspective, the relationships of economy and politics with space, identifying this last one with a social institution shaped itself by social, political and economical contexts. I can not even summarize here the huge theoretical debate on the concept of space that from Durkeim and

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Mauss, passing through Foucault and Lefebvre, was channeled into postmodern geographers' theories such as those of Harvey or Soya. But it is useful to stress that from these theoretical critics of the conception of space of Newton it has been possible to rethink the image of homogeneity of the state space offered by Western public lawyers between XIXth and XXth century and at the same time to challenge the existence of a unitarian concept of sovereignty.

In this sense my aim, therefore, is not only to assume Tianjin as a determined space in which texts, institutions and subjects were placed, but also to understand how this space has been imaged, looking at which economical, political and social strategies of governance were involved in its construction and which forms of resistance or negotiations were put in place by Chinese elites.

Tianjin is a complex, multilevel and hybrid place, (in) between East and West, defined by social practices, symbolic representations and legal categories, which does not coincide simply with the area defined by the entity as a state, nation, or city. China was a «hipocolony» (ci zhimindi) as it was defined by Sun Yatsen, who intended to stress the weakness of China, confined only in a semicolonial dimension but with more difficulties to define its own process to acquire a national identity than colonies like Korea and Vietnam. Reversing the definition of Sun Yatsen, more recently Ruth Rogaski has seen in Tianjin a «hiper colony» that is a space placed under a multiplicity of foreign powers, crossed by their different strategies of colonization.

As a matter of fact Tianjin was the only Chinese city in which up to nine foreign concessions (French, English, Austro-Hungarian, Belgian, Italian, German, Russian, American, and Japanese) coexisted.

The history of Western presence in Tianjin began officially between 1860 and 1861 when, according with the Treaty of Tianjin, seventy-six and sixty acres of land were, respectively, leased in perpetuity to the British and French government, with a small ground rent paid

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annually to China\textsuperscript{31}. Also the American concession was granted in the same years, but it never properly developed, and in 1891 it was given back to the Chinese Government (but United States kept the right to have a concession and the possibility to exercise it in the future) and in 1902 it was placed under the Britain control\textsuperscript{32}.

More than thirty years later, respectively in 1895 and in 1896, German and Japan received concession rights and joined the Western powers already established in the city\textsuperscript{33}. But only at the beginning of XXth century with the Boxers’ defeat and the occupation of the city by the allied army (USA, Great Britain, France, Japan, Russia, Germany, Austria-Hungary, and Italy), Tianjin changed definitively. In the Boxer Protocoll, signed in 1901 at Beijing the allied powers gained the right to occupy «certains points, à déterminer par un accord entre elles, pour maintenir les communications libres entre la capitale et la mer. Les points occupés par les Puissances sont: Houang-Ts’oun, Lang-Jang, Yang-Ts’oun, Tien-Tsin, Kiun-Léang-Tchang, T’hang-Kou, Lou-Tai, T’ang-Chan, Louan-Tcheou, Tchang-Li, Ts’in-Wang-Tao, Chan-Hai-Kouan»\textsuperscript{34}. But in reality, they had already taken physical possession of part of the Chinese territory. In April 1901, for example, well before the bilateral agreement between Italy and China (1902) and the Peking Protocoll were signed, the commander of the Italian garrison, lieutenant Valli, published on Tien-Tsin Express an advise in Italian and in English which defined clearly the confines of the Italian concession, inviting the Italian citizens and foreigners who claimed ownership of land or buildings within these boundaries to present their titles to the Legation in Beijing or to the military command of Tianjin\textsuperscript{35}.

In the same fashion as Italy, between the years 1901 and 1903 Austria, Belgium and Russia, through an agreement of private law, obtained their own concession and they started to formally enjoy the rights over the Chinese territory that they had already physically occupied. At the same time France, England, Germany and Japan obtained an enlargement of their previous concessions, producing a metropolitan space with more than one million inhabitants composed


\textsuperscript{34} Trattati e convenzioni fra il Regno d’Italia e altri Stati raccolti per cura del Ministero degli Affari Esteri, Roma 1903, pp. 259-69, in part. p. 266.

\textsuperscript{35} The text (1, April, 1901) is in ASMAE, serie P, pos. 86/37, pac. 426 (1901), s. Luigi Nuzzo, Italiani in Cina: la concessione di Tien Tsin, in Mazzacane Aldo (Hrsg.), Diritto, istituzioni e economia nell’Italia fascista, Nomos, Bade Baden, 2002, pp. 255-281.
by two distinct but connected entities - the Chinese City and the foreigner concessions –crossed by a multiplicity of physical, legal and social boundaries.

This space, or better the process of definition of the territorial space of Tianjin as a new social space is the focus of my work.

This means in the first place that I will proceed with the reconstruction, through a comparative analysis, of the categories used by Western legal scholarship to give a legal form to the occupation of the territory of Tianjin.

The ambiguities contained in those agreements require a study of the category of the concession and its relation with the category of the settlement as well as an analysis of the effects that they produced on Chinese sovereignty. On a general level the settlements and the leased concessions, constituted a serious vulnus with respect to international law. But at the same time, for a quite number of Western international lawyers these were signs of a great force, which could compel general law to change according to the needs of the social reality. Beyond the borders of the Occident, there was an overlap between iura and facta, between rules and exceptions, and between rights and privileges to the extent that it was ultimately no longer possible to differentiate between them. The result was the acquisition of legitimacy of power structures that had nothing to do with the Rule of Law and the introduction of «un diritto nuovo e formalmente antigiuridico»36.

Concessions and settlements expressed also two models and two different legal strategies in the construction of the colonial space: a continental one, with a public character, dominated by the idea of State pre-eminence; and a more flexible one, structured on the Anglo-Saxon model, opened to private entities and their interests, and with a tenency to separate the control of the territory from the activities of management of production. The continual overlapping of the two terminologies in the legal texts shows the influence exerted by the private and economic Anglo-Saxon model that not only guaranteed the residents the free exercise of commercial activities under the protection of the law of their own nationality, but also allowed them to have a more active role in the administration of the concession. At the same time the recourse to instruments of private law for the recognition of the foreign powers’ territorial rights led the Western legal doctrine to admit that Tianjin could not be defined as colony and that China still exercised its own sovereignty over it. Certainly China maintained the property of the land granted to the foreign powers, as it is reflected by yearly payment of the lease, but how could the Chinese sovereignty live together with the perpetuity of concessions and the full jurisdiction reserved to

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the foreign consuls? What did «ultimate sovereignty» mean? What did happened to the Western concept of sovereignty during its transfer towards East and how changed its relationship with the territory?

For giving a correct answer to this last question and for a better understanding of the Western strategies of governance I will focus also on the extraordinary case of Tianjin Provisional Government. It was composed by representatives of the United States, Great Britain, France, Japan and it was responsible to administer the Chinese city for two years.

It is an incredible history waiting to be written. Although in 1985 the American scholar Lewis Bernstein devoted a chapter of his PhD thesis, *A History of Tianjin in the early modern times, 1800-1910*, to the Tianjin Provisional Government, he did not use the most relevant source, that is the *Procès Verbaux des Séances du Conseil du Gouvernement Provisoire de la Cité de Tientsin*. As he wrote, at that time, they seemed to have disappeared. Thanks to Bernstein’s suggestions and following the path of Charles Denby Jr., an American diplomat who was appointed as general secretary of the Tianjin Provisional Government, I found the *Procès Verbaux*. Through the deeds of the Provisional Government and the papers of a special protagonist such as Charlie Denby Jr (held in the Library of Congress) I intend to analyse the exceptionality of the Tianjin Provisional Government (TPG). In Tianjin, in the same ways as in Western countries, where in case of international necessity or after a State’s siege declaration the ordinary administration was entrusted to the government decrees or to the regulations of military authorities, the necessity and the urgency to defend the public and the international order justified the suspension of Chinese Law and the absolute power of the allied military forces. The work will thus approach the TPG’s exceptionality from a legal perspective, focusing on the colonial governance of the city and analysing the process of its reconstruction (particularly expropriation processes, transfers of real estates, land and urban regulations) and the activity of the Tianjin Justice Department headed by the American W.S. Emens (particularly police orders, the TPG jurisdiction on Chinese populations and the jurisdictional conflict between the TPG and consuls of the first four foreign concessions).

The TPG experience concerned exclusively the Chinese part of Tianjin and it ended on August 1902 with its restitution to the Chinese sovereignty. This did not mean a reduction of the influence of Western powers in the administrative life of Tianjin. On one hand Charles Denby was appointed until 1905 as chief foreign advisor of the Chinese governor, Yuan Shikai. On the other hand the victory of allied forces allowed the enlargement of the first four concessions and the opening of new ones.
After having clarified the theoretical relation between the legal categories used to justifying the take over the city of Tianjin, I will be able to do a close analysis of the legal and cultural interactions that took place within it until the end of the Second World War. A new social space requires in fact a transformation, it implies that the space is lived in, and implies a new order, a different code that presupposes and at the same time produces a new life. This means entering into the different concessions and, through a comparative approach, taking in serious consideration the different urban models used by the European powers in the process of invention of a new urban space. Finally, it means to reconstruct the regulatory and jurisdictional strategies that resulted from it and the ways justice was administered.37.

Also in this respect Tianjin is an example of extraordinary interest.

If the function of the colonial city is to ensure the political control of local populations and through the ranking of the relations between colonized and colonizers, the first form of this control is precisely the organization of urban space. Constructed through the various concessions, the Western Tianjin was opposed to the Chinese city and it symbolically reflected, through its urban structures, the hierarchy of relationships between the various Western powers and between them and the Chinese population. The organization of urban space is a symbol and an instrument to read and understand the colonial exceptionality and the ambiguous relationship that was established between the colonial society and the colonized society.

Legislative and jurisdictional provisions, administrative practices, and economic and urban strategies will all constitute the indispensable texts to shed new lights on how, through the production of a new social space, the different Western communities “imagined” the Chinese community and how the model of the universal and abstract legal subject was confronted in China with the concept of difference and inequality.

What I propose to do, taking Tianjin as a point of observation, is to reconstruct the colonial otherness as a dark side of Western legal subjectivity and of the political anthropology implied in the discourse on citizenship. It is an attempt to complicate, through the filter of the colonial moment, the image that the legal discourse creates of its own subject. My aim is to rethink it, starting from the vacuum produced by the colonial removals. In other words the objective is to understand the role played in China by the image of the individual, metropolitan citizen, in the ideological construction of the otherness, and to delineate the relation between Western and Chinese in more complex terms than those suggested by the application of the category of

exclusion or by an interpretation based simply on the opposition between citizens and subjects or metropolis and colony\textsuperscript{38}.

This means therefore not only to reconstruct the process of discipline and segregation through which the relations of exclusion were consolidated and the daily practices of dominion and subjugation were reinforced. But it also means to set the ambitious goal of reconstructing the strategies through which the Chinese elites of Tianjin took on Western cultural and legal models to activate internal politics of resistance or assimilation, while examining doctoral the thesis of Chinese students in European and American universities during the 1920s and 1930s, and see how they used international law arguments to fight their own battles against extraterritoriality and the defense of Chinese territorial sovereignty.