

INTERNATIONAL LEGAL THEORY

The Birth of an Imperial Location: Comparative Perspectives on Western Colonialism in China

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Abstract

The thematic horizon within which this article takes place is the colonial expansion of the Western powers in China between the nineteenth and the twentieth centuries. Focusing on the foundation of the British, French and American concessions in Tianjin, it aims to reconstruct the Western strategies of colonial governance and the role played by law in the process of production of a new social space. Opened as a treaty port in 1860, Tianjin is the only Chinese city where up to nine foreign concessions coexisted, becoming a complex, hybrid space (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.

Keywords

China (nineteenth century); colonial law; international law; Tianjin; Western imperialism

I. INTRODUCTION

The history of Western concessions in the northeastern Chinese port of Tianjin began in 1860, when the Beijing Convention leased three large tracts of land in perpetuity to Britain, France and the United States, in return for a small ground rent paid annually to China.¹

Concession rights were given also to Germany in 1895 and to Japan in 1896, but it was only at the beginning of the twentieth century with the defeat of the Boxer Rebellion and occupation by the allied army (the US, Britain, France, Japan, Russia, Germany, Austria-Hungary and Italy) that Tianjin changed definitively. In the 1901 Boxer Protocol, the allied powers gained the right to occupy 'certain points in order to

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¹ The opening of the port of Tianjin was foreseen in Art. IV of the Beijing Convention, ratified with Britain on 24 October 1860, and in Art. VII of the homologous convention between France and China, ratified on the following day. The conventions ratified in Beijing by China, Britain and France are available at www.chinaforeignrelations.net. For general information, see F. Clifford Jones, *Shanghai and Tientsin: With Special Reference to Foreign Interests* (1940), 120 ff.; O. Rasmussen, *Tientsin: An Illustrated Outline History* (1925). See also P. Singaravelou, *Tianjin Cosmopolis. Une autre histoire de la mondialisation* (2017).

maintain free communication between the capital and the sea'.² In this way France, England, Germany and Japan enlarged their previous concessions, while Russia, Austria, Italy and Belgium also obtained concessions and received formal rights over Chinese territory they already physically occupied. A metropolitan space with more than a million inhabitants was created, composed of two distinct but connected entities – the Chinese city and the foreign concessions – and crossed by a multiplicity of physical, legal and social boundaries.

The object of this article is to analyze the legal problems connected with the construction of that space from the beginning of the 1860s to the end of the nineteenth century. It focuses on the British, France and US concessions at Tianjin in order to reconstruct the Western strategies for legitimizing the occupation of Chinese territory and transforming a remote location of the Chinese Empire into a new social space.

In recent years international lawyers and legal historians have revisited the so-called unequal treaties, producing interesting work on Western representations of Chinese law, its jurisdictions, and China's position in the international legal order.³ Yet the foreign concessions in Tianjin have remained a field of research entrusted to sinologists and scholars of urban history. Their investigations have successfully problematized the modernization process of Chinese cities but underestimate the impact of law and legal discourses in defining a new colonial space that was completely different from Western models of city, nation and state. Reconstructing the legal history of the early years of the Western concessions in Tianjin allows an understanding not only of the connection between international law, consular law and colonialism, but also of the role played by private law and administrative practices in colonial and semi-colonial contexts.

Tianjin is thus an invaluable viewpoint from which to grasp how a social space could emerge in which new relationships between different legal systems were defined. At the same time, Tianjin may also be considered a model for reading Western theoretical discussions on the exceptionality of non-Western spaces and their populations, and for analyzing the transformation of the concept of sovereignty beyond Western borders. Because it is a decentralized observation platform from which to see the spatial dimensions of Western legal discourse, a spatial perspective must be taken in order to reconstruct the complex network of legal, political, social, and economic relations. But the way through which the legal discourse imagines and constructs the space is itself also an objective of this analysis.

As Émile Durkheim and Marcel Mauss remarked at the beginning of the last century, space is not homogeneous, universal or constant. By overcoming the classical representation of Newton and Descartes as well as the Kantian identification

² 1901 Boxer Protocol, Peking, Art. IX, available at www.chinaforeignrelations.net.

³ W. Tiewa, 'International law in China: historical and contemporary perspectives', (1990) 221 *Recueil des cours, Collected Courses* (1953) 69; M. Craven, 'What Happened to the Unequal Treaties? The Continuities of Informal Empire', (2005) 74 *Nordic Journal of International Law* 335–82. See also L. Liu, *The Clash of Empires. The Invention of China in Modern World Making*, (2004); R. Svarverud, *International Law as World Order in Late Imperial China: Translation, Reception and Discourse*, (2007); U. Özsu, 'Ottoman Empire', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), 433–45.

of space and time as pure and *a priori* intuitions, their social dimensions were revealed.⁴ Seventy years later, Henry Lefebvre analyzed, from a Marxist perspective, the relationships of economy and politics with space, identifying space as a social institution shaped by social, political and economic contexts.⁵ I cannot summarize here the huge theoretical debates on the concept of space which, through scholars from Durkheim and Mauss to Foucault and Lefebvre, have been channelled into the theories of postmodern geographers such as Harvey, Soja and Farinelli.⁶ But it is useful to stress that these theoretical critiques of Newton's conception of space make it possible to rethink the image of the state as homogenous public space offered by Western public lawyers in the nineteenth and twentieth centuries, and to challenge the existence of a unitary concept of sovereignty.⁷

In this way, understanding how the urban space of Tianjin was imagined and then realized, analyzing both the strategies involved in its construction and in the forms of resistance or negotiation put in place by Chinese diplomacy and local elites, allows us to 'provincialize' the concept of sovereignty and recognize the locality of international law itself. The Western concessions at Tianjin demonstrate that the relationship between governmental power, territory and subjects outside the West worked differently. As Georg Jellinek wrote at the end of the nineteenth century, outside the West sovereignty 'was not longer an essential characteristic of the state, but only a historical category necessary for the understanding of the contemporary state system, not of the state itself'.⁸

The strange perpetual lease agreement used by Britain, France and United States to give juridical form to the occupation of large portions of Chinese territory shows the continuous overlap between public and private law in colonial and semi-colonial contexts, raising questions about both the limits of the concept of sovereignty outside the West and the limits of statehood as the condition for international subjectivity.

2. THE AMBIGUOUS ORIGINS OF A COLONIAL CITY

The 1858 Treaties of Tianjin between China, Britain and France anticipated the end of the Second Opium War and traced the beginning of Tianjin's history as an imperial location.⁹ Ratifications were exchanged and the treaties implemented only

⁴ É. Durkheim and M. Mauss, 'De quelques forme primitive de classification: Contribution à l'étude des représentations collective', (1903) 6 *L'Année sociologique* 1–72. Pietro Costa has recently stressed the relevance of this article in a seminal work, P. Costa, 'Uno spatial turn per la storia del diritto? Una rassegna tematica', (2013) 7 *Max Plank Institute for European Legal History Research paper Series* 1–30.

⁵ H. Lefebvre, *La production de l'espace* (1974); H. Lefebvre, *De l'État* (1976–1978).

⁶ M. Foucault, 'Des espaces autres', in D. Defert and F. Ewald (eds.), *Michael Foucault, Dits et écrits*, Vol. 6, (1994), 752–62; D. Harvey, *The Urban Experience* (1989); E. Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (1989); F. Farinelli, *La crisi della ragione cartografica* (1999).

⁷ L. Nuzzo, 'Territory, Sovereignty and the Construction of the Colonial Space', in M. Koskenniemi, W. Rech and M. Jiménez Fonseca (eds.), *International Law and Empire* (2017), 263–94.

⁸ G. Jellinek, *Ueber Staatsfragmente* (1896), 11.

⁹ See respectively Art. 11 of the 1858 Treaty of Peace, Friendship, Commerce and Navigation between her Majesty the Queen of Great Britain and Ireland and the Emperor of China, in W.F. Mayers (ed.) *Treaties between the Empire of China and the Foreign Powers together with regulations for the conduct of foreign trade, conventions, agreement, regulations* (1877), (1903), and Art. 6 of the 1858 homologous treaty ratified with France (English version available at www.chinaforeignrelations.net/node/162).

with the Beijing Convention two years later, after Anglo-French troops entered the city and destroyed its Summer Palace. The compensation China had to pay to France and Britain was set at 16 million *taels*, and it was stipulated that both the town and harbour of Tianjin should open to Western trade under the same conditions established for the other 'treaty ports' of the Chinese Empire.¹⁰

A few months later, between the end of 1860 and the first months of 1861, the Chinese authorities allowed the British, French and, by virtue of the clause of the most privileged nation, the Americans three plots of land along the Hai River for the construction of settlements. In the volume of the *Treaties Series* dedicated to treaties stipulated between Britain and China, the agreement concerning Tianjin is listed as signed on September 3, 1861 as the last in a series of leases allowing the European power to have its own concessions in Zhenjiang (23 February 1861), Hankou (21 March 1861) and Jujiang (25 March 1861) and to widen the already existing one in Guangzhou,¹¹ but this contract seems to have disappeared. As the British consul Byron Brennan wrote to Thomas G. Grosvenor, British chargé d'affair in Beijing, in fact, 'no formal lease for the British concession at Tientsin has been issued by the Chinese Government'.¹² The only proof of the agreement's existence is a receipt issued by the Chinese district officer concerning the payment of an annual fee by the British consul and diligently reported in the volume [see [Figure 1](#)].¹³

Tientsin was occupied by the allied forces by August 1860, however. The Chinese authorities had been allowed to continue to administer the city, but they were now placed under strict British control and had to work collaboratively, providing adequate assistance to British troops moving on to conquer Beijing. To this end Admiral James Hope left in Tianjin his interpreter, Harry Parkes, to select the most suitable accommodation for James Bruce Lord Elgin, Britain's high commissioner and plenipotentiary in China and the Far East, and find buildings Britain could allocate to public service.¹⁴ One month after the Beijing Convention had transformed Tianjin into an open port, Parkes issued a Memorandum in which he singled out the borders of the British settlement, a few miles south of Tianjin's centre, between the southern walls of the town and the river. This seems to be the first and only document that recognized and presupposed Britain's right to have its own space, fixing the outlines of the future development of its concession.¹⁵ Yet the version I have been able to locate of this text is so hurriedly written, so full of corrections

¹⁰ See *supra* note 1.

¹¹ Ann. 7, Tien-Tsin, British Concession, in Lease Treaty Series N. 34 (1925), *List of Treaties, &c., between Great Britain and China (1842-1922), including International Treaties, and Treaties between Great Britain and Foreign Powers relating to China* (1925), 26.

¹² Byron Brennan to Thomas G. Grosvenor, Tientsin, 15 February 1883, in the National Archives (thereafter TNA), FO 228/731. Brennan reported a despatch of 6 January 1877 by the British consul in Tianjin, James Mongan. The same statement is reported with no indication of the source in Ann. 7 Tien-Tsin, British Concession, *supra* note 11, at 26.

¹³ Ann. 7, *ibid.* 'To annual rent for the year ending, paid to the Chinese Government for the British concession at Tien-tsin, known by the name of Tan Chu Lin, viz., 412 mou, 6t. 5m. Se. at 1,500 copper cash per mou=618,987 copper cash'. The *mou* is a Chinese unit of land measurement, commonly about 800 square yards.

¹⁴ Harry S. Parkes to James Bruce, Lord of Elgin, Tientsin, August, 26, 1860, in *Correspondence respecting Affairs in China, 1859-1860* (1861), 127.

¹⁵ Harry S. Parkes, *Land Memorandum*, Tientsin, 25 November 1860, in TNA: FO, 674/1.



Figure 1. (Colour online) Plan showing the present state of the British Settlement of Tientsin 1865¹⁶

and cuts, that it is hard to consider it more than a simple draft. A more readable copy was attached 13 years later, together with other relevant documents, to a letter written by the first British consul at Tianjin, James Mongan, to Edmund Hornby, chief justice in Shanghai.¹⁷ If this confirms the importance of the Parkes' Memorandum and reinforces its image as constitutive act of the English presence in Tianjin, the strange feeling of uncertainty and ambiguity it transmits due to several points does not disappear. On the one hand it seems to be intended for both Chinese and Britons. A Chinese officer and a member of prince Sengerinchen's Committee of supplies are mentioned assisting Parkes defining the borders, the Chinese village is named by its Chinese name, and the unit of land measurement is a Chinese one, the *zhang*.¹⁸ On the other hand, it was signed only by Parkes, the annual rent to be paid to Chinese government had yet to be determined and the dimensions of the area had not still been exactly calculated.

Parkes, anyway, estimated it correctly at around 430/440 *mou*, fixed the rates of the land tax and traced the borders of settlement.¹⁹ They run clearly from north to

¹⁶ TNA: FO, MPKK 1/50/9.

¹⁷ James Mongan to Edmund Hornby, Tientsin 26 August 1873, in TNA: FO 656/44.

¹⁸ In the version enclosed with the letter of 1873 (TNA: FO 656/44) to Hornby, the Chinese village is no longer written with Chinese characters.

¹⁹ Parkes, *Land Memorandum*, in TNA: FO, 674/1.

south following a line of about one kilometre along the river and using trees, docks, huts and wells as points of reference.²⁰ Situated two miles south of the Chinese city of Tianjin, the site, however, was a not blank space. It included a Chinese village, and a village meant huts, graves and buildings to demolish and people to move. As we shall see, Britain, like all the occupying allied forces, could not accept a Chinese presence for symbolic, economic and legal reasons. The Memorandum, therefore, had to clearly fix the terms of expropriating the land of the Zizhulin village, as well as expelling and compensating its people; the value of huts and buildings had to be refunded, but as long as the Chinese continued to occupy the ground, the English were exempted from paying the land tax to the Chinese Government.²¹

The Memorandum adds nothing more, substantially improving on the right of occupation recognized by Article IV of the Beijing Convention, and giving legal shape to the agreements reached by Parkes and fellow British official Charles Gordon with the Chinese authorities. Thus, to identify the legal theoretical framework of the Tianjin agreement, we can look at other lease agreements stipulated by the British Crown for the settlements of Guangzhou, Zhenjiang, Hankou and Jujiang. In all these cases, we can see that the Crown had in fact turned to a standardized model: a strange contract of tenancy without a temporal expiry concerning a variable plot of land, the rent of which was to be paid annually. With the signing of the contract and the payment of the first year's rent, the land might be considered the property of the British Crown and subjected to the full jurisdiction of its consul, who must attend to the development of the concession, the subletting of plots of land and, in agreement with the imperial functionaries, the expropriation of the Chinese properties. As is shown from the lease concerning Hankou, a densely populated fluvial town that towards the end of the nineteenth century also became the seat of the German, French, Russian and Japanese settlements, the British consul, the Chinese district prefect and the magistrate should have summoned the land and stock owners within the concessions, asking them to present their instruments, and then look to the payment of the indemnity of expropriation. Possible conflicts would then have been resolved on equitable basis.²²

But go back to Tianjin: just a few days after Parkes' Memorandum, Lord Elgin asked Prince Gong, of China's Qing dynasty, for the lease in perpetuity of an area of 440 *mou* south of Tianjin, with the agreement that the Chinese inhabitants should be evacuated and their possessions expropriated. He confirmed the indemnity at 30 *taels* per *mou*. Gong replied promptly that he would ask the Viceroy of Zhili to collaborate with the English in managing the lease agreement and constructing the consulate building.²³ According the instructions of Parkes and Prince Gong, by the end of December 1860, Mongan, appointed acting consul at Tianjin that month, had marked the borders of the settlement and planted four boundary stones. In the first

²⁰ Ibid.

²¹ If the British were exempted from paying the land tax to the Chinese government until the Chinese refused to leave their properties, they were not allowed to build new buildings.

²² Ann. 2, Hankow Lease (21 March 1861), in Lease Treaty Series N. 34 (1925), *supra* note 11, at 19.

²³ Lord Elgin to Prince Gong, 4 December 1860, in TNA: FO 682/1993/93; Prince Gong to Lord Elgin, 8 December 1860, in TNA: FO 682/1993/97.

months of the following year, he sent to Lord Elgin in Beijing two plans executed by Gordon, asking that they both be lithographed and published in the *North Chinese Herald* of Shanghai.²⁴ The future of settlement depended on the quick sale of the lots; it was therefore necessary to attract investors with a clear development plan that suggested real prospects for enrichment.

Tianjin had a bad reputation. Only two years before, entering the city with Lord Elgin, Laurence Oliphant had written that:

to contain half a million of inhabitants, Tientsin was the most squalid, impoverished-looking place we had ever been in . . . In no part of the world have I ever witnessed a more squalid, diseased population than that which seemed rather to infest than inhabit the suburbs of the city.²⁵

British Tianjin resident Alexander Michie, in an 1886 article published in the *Tientsin Express* spoke of the ‘well known’ aptitude to crime and violence of Tianjin ‘bullies’, ‘the most wicked and predatory turbulent race in the Empire’.²⁶ Nature was also hostile in Tianjin: the winters were freezing and the summers humid and hot. And the Hai, the great river that put Tianjin in communication with Beijing and the sea, ran impetuously ‘in the shape of corncrew’, carrying with it large quantities of mud and rendering navigation difficult.²⁷ Western military and civil reports emphasized that due to inadequate levies and low banks, the river frequently flooded and wiped out nearby huts.²⁸

Yet the river determined Tianjin’s strategic importance on economic, political and military levels. Situated at the centre of a great water basin, Tianjin could open up an extraordinary market for Indian opium and British products (especially cotton and woollen goods) in China’s north, as well as becoming a good port from which Chinese cotton and tobacco could be imported into the UK. It was not by chance that the British and other foreign settlements were placed along both banks and all consuls paid great attention to the river, planning strong interventions to facilitate navigation, assure river conservancy and protect the ground lying beside it. After the great flood of 1896, this led, as Shirley Ye has recently pointed out, to the founding of the Hai River Conservancy Commission in 1897. With this interesting mixed commission appointed by Li Hongzang, governor general of Zhili, the consuls of Britain and France, and the chairman of Tianjin’s general commerce chamber, Chinese and Western actors tried to find a way to co-operate in overcoming problems affecting Chinese and Western vessels.²⁹

²⁴ Mongan to Bruce, 4 April 1861, in TNA: FO, 674/1.

²⁵ L. Oliphant, *Narrative of the Earl of Elgin’s Mission to China and Japan in the years 1857, 1858, 1859*, Vol. 1 (1859), at 385, 399.

²⁶ A large passage of Alexander Michie’s book, published in 1886 in the *Tientsin Express*, is quoted by Rasmussen, *supra* note 1, at 37. See also the conference held at the China Society of London in 1917 by the former secretary to the British Municipal Council of Tianjin William McLeish, *Life in China Outport* (1917), 24.

²⁷ *Guide to Tientsin* (1904), 1.

²⁸ Mongan, *Report*, at 1459. See also the report of the US Lieutenant J.t. Dickman, Pekin, 5 November 1900, in *Report on Military Operations in South Africa and China* (1901), 493–8.

²⁹ S. Ye, ‘Interport Printing Enterprise: Macanese Printing Networks in Chinese Treaty Ports’, in R. Bickers and I. Jackson (eds.), *Treaty Port in Modern China: Law, Land and Power* (2016), 121–38.

Mongan too was conscious that the future of the city and the English settlement depended on the river. It was necessary to wield military control over river traffic by imposing limits on the navigation of Chinese junks and strictly suppressing smuggling and piracy, but it was also crucial, as the river was opened up, to fix certain customs rules. The Custom Houses system, re-established in 1854 at Shanghai with the participation of foreign inspectors, was going to be extended to Tianjin, but trade conditions still looked confused.³⁰ In April 1861 the inspector general of Britain's Maritime Customs, Horatio Lay, went home on formal sick leave, and came back to China only two years later.³¹ George Henry Fitzroy and Robert Hart were appointed by Prince Gong to exercise the functions of inspector general from May but, as Mongan wrote to Bruce, 'the arrival of foreign shipping may be daily expected'. It was thus necessary to immediately introduce that system of policing and taxation which characterized the Chinese custom institutions, pursuing close co-operation between British and Chinese officers. Therefore, in agreement with Chung Hou, the superintendent of trade of the three northern ports, Mongan elaborated a short set of six regulations and on 12 March sent them to Bruce at Shanghai.³² Obviously he knew that it could be only a temporary set of rules and that it probably would be modified by the Custom service when Tianjin was also included within the Custom Houses system. His regulations provided for the opening of a custom house for foreign shipping at the northern extremity of the settlement and for an Office of General Inspection at Dagou. In this way any British merchant vessel entering the Hai River could be easily be boarded and visited by a Custom House Officer who would remain on board until reaching point of anchorage at Tianjin. The day after anchorage, in accordance with Article 37 of the Treaty of Tianjin, the ship's papers had to be lodged with the consul who, within the next 24 hours, must report the ship's name and tonnage as well as the nature of its cargo to the customs superintendent in order to determine the amount of the duties and custom charges.³³ On 19 April, Chung Hou officially opened a new custom house on the Hai River in the Chinese village of Zizhulin, precisely within the British settlement. The new custom house was added to the old one and, according to the superintendent, would collect duties on all goods imported and exported by foreign merchant vessels, while the old custom house would be competent in the event that goods had travelled on native crafts, and if they were Chinese products.³⁴ But although Chung Hou was still referring to the Chinese village as the spatial marker of the custom house's site, the village itself was about to disappear: between March and April 1861, Mongan had

³⁰ H. Van de Ven, *Breaking With the Past: The Maritime Customs Service and the Global Origins of Modernity in China* (2014), 31; R. Bickers, 'Good Work for China in every possible direction. The Foreign Inspectorate of Chinese Maritime Customs 1854-1950', in B. Goodman and D.S.G. Goodmann (eds.), *Twentieth-Century Colonialism and China: localities, the everyday and the world* (2012), 25-37.

³¹ Mongan to Bruce, Tientsin, 12 March 12 1861, in TNA: FO 674/3. Lay went back to China in May 1863 and was replaced by Hart in November 1863 following a clash with Prince Gong on the control, use and financing of the British fleet of warships known as the Lay-Osborne Flotilla. See Van de Ven, *supra* note 30; J. Gerson, *Horatio Nelson Lay and Sino-British Relations, 1854-1864* (1972).

³² Mongan to Bruce, Tientsin, 12 March 1861, in TNA: FO 674/3. Bruce acknowledged receipt of the letter on 4 June 1861.

³³ Mongan to Bruce, *ibid*.

³⁴ Chung Hou to Mongan, Tienstin 19 April 1861, in TNA: FO 673/1.

partitioned the ground into 30 lots and planned their sale – with four for reserved consular purposes.³⁵ Thanks to the Hai River, its huge basin and its net of canals, Tianjin could become the hub of the British Empire in Northern China, and thus attract British investors' interest. The consul believed that buying lots would be so important for the development of entrepreneurial activity that he requested that purchasers not only contribute like everyone else to the settlement's urbanization process (provision of roads, levelling of land, and so on) but also build the bund along the waterfront at their own expense. In addition, Mongan was equally convinced that the involvement of the Chinese government was necessary for the settlement's rapid improvement and, paradoxically, to free it from the Chinese who lived in it.

As Parkes' Memorandum made clear, the Chinese had to leave their land and properties. It was therefore necessary for Mongan to create a careful list of all Chinese householders and determine the value of each house; the British officers were required to check their results with the data held by the Chinese government and balance the amount of reimbursement they proposed with the government's economic requests. Mongan then suggested to Bruce some solutions concerning the lots' sale. To prevent speculation and concentrations of real estate in the hands of a few investors, he preferred to sell the land to local residents and preclude the possibility of applying, at least in the first instance, for more than one lot. If there were multiple requests for the same lot, it should be sold by public auction to the highest bidder; if a lot received no offers, the limitation of one lot per head would be removed. Finally, Mongan suggested that all applications be sent by 31 May 1861 to the British Consulate at Tianjin and that the sale take place the day after, allowing sufficient notice of plans for the site, the conditions of sale and detailed schedules for each lot, together with the assessed value of Chinese buildings eventually encompassed within the single lots.³⁶

Just a few days before, the acting inspector general, Robert Hart, and the French secretary of legation and customs commissioner at Tianjin, Michael Kleczkowski, arrived in town in order to finally put into effect the customs prescriptions of the Treaty of Tianjin. At the same time, Chung Hou sent the final Tianjin Custom House regulations to Mongan, asking him to transmit these to British merchants residing at the port.³⁷

On 29 August 1861, John Gibson who, due to Mongan having been taken ill, was acting consul, started the first land sale. A month later Bruce authorized the addition of another tract of land on the southern side of the settlement to compensate for four lots placed at the disposal of the Chinese Government. Then, at the beginning of 1862, he sanctioned 'the purchase of a new strip of land on the South side', definitively establishing the concession's southern border. The sales were a great success and at the end of September 1863 all the lots had been sold – although

³⁵ Mongan to Hornby, Tientsin 26 August 1873, in TNA: FO 656/44. 'The four lots situated on the Northern side of the settlement, adjoining the French concession, were afterwards given up by Mr. Gibson to Chung-hou, the Chinese Minister superintendent who had applied for some land in that position as a site for the Foreign Custom House'.

³⁶ Mongan to Bruce, Tientsin 4 April 1861, in TNA: FO 674/1.

³⁷ Chung hou to Mongan, 22 May 1861, in TNA: FO 673/1.

a formal lease agreement was still missing. Between 1863 and 1865 there were differences between Gibson and the Tianjin authorities on the extension of the concession and consequently about the rent to pay, but according to Mongan he succeeded in recalculating the annual rent fixed by the Chinese local government at 618.985 copper cash. In respect of this payment, a receipt was obtained – the only proof of the legal legitimacy of the British presence at Tianjin. It testified that ‘the Tse-Chu Lin is in consideration of the above yearly payment rented in perpetuity by the British Government’.³⁸

Within the settlement, every lease lasted for 99 years at a rent of 1,500 copper cash per *mou*, and leaseholders were compelled to contribute to the cost of building, repair and lighting of the road in the concession, its security and its general improvement.³⁹ In 1862, the leaseholders elected a municipal council and between 27 October 1863 and 1 June 1864 the concession’s first local land regulations were published. Yet in November 1866 they were abrogated by Rutherford Alcock, British plenipotentiary minister and chief superintendent of trade, who issued new regulations for the lands in the concession and the administration of the consular district of Tianjin.⁴⁰ Both were issued by virtue of the China and Japan Order in Council of the year before, thanks to which the Crown reserved the right to issue regulations for the good administration of its consular districts and the good government of Britons living in the treaty ports. The Tianjin local land regulations and general regulations were binding for every British citizen dwelling, or being, within the settlement.

Four boundary stones distinguished the space of the British concession from the French and US ones, but its simple definition was not sufficient to guarantee its transformation into a new social space. It was necessary that the territory, once militarily occupied, conceded and measured, was actually inhabited and, through new political, economic, juridical and architectonic practices, bore indelible traces of the Crown’s authority.⁴¹ While the recourse to the concept of concession and the payment of a yearly fee to the local authorities allowed formal recognition of Chinese sovereignty over the territory of the concession, the perpetuity of the concession, the forced expropriation of Chinese property, the expulsion of local people and the recognition of a full jurisdiction in favour of the occupying powers seemed to irreparably break the relationship between the Chinese state and the conceded territory, making the cession perfect and creating real territorial rights. The Local Land Regulations and the General Regulations were the first attempt to give the new space a juridical order; they are detailed regulations aimed at carefully and precisely regulating life inside the settlement, working towards a definition of the concession’s inner and outer space.

³⁸ Mongan to Hornby, Tientsin, 26 August 1873, in TNA: FO 656/44. The receipt of 1865 became the official receipt and was edited in Ann. 7, Tien-Tsin, British Concession, in Lease Treaty Series N. 34 (1925), *supra* note 11, at 26.

³⁹ A list of the first owners is in Foreign Office, Consulate of Tientsin, in TNA: FO 678/1292. For more information about the first Europeans living in Tianjin see Rasmussen, *supra* note 1, at 39–44.

⁴⁰ 1866 Tientsin Local Land Regulations and General Regulations (1866).

⁴¹ On the architectural transformations in the English settlement see D. Arnold, ‘Construire la modernité urbaine: la concession britannique à Tianjin, 1860-2013’, (2014) 382/383 *Outre-Mers. Revue d’histoire* 89–102.

After fixing its borders, identifying the plots to be subleased, and determining the cost of each unit of land, the Crown hoped to make the territory homogenous by defining the qualifications required in a leaseholder. Citizens and naturalized British should be prioritized, but foreigners were not excluded.⁴² They could also buy plots of land, provided that they both expressly observed the norms contained in the Land Regulations and the bylaws issued for the concession, and that they obtained 'the officially certified consent of his national authority'. But what about the Chinese? Might they be considered foreigners in their mother country and thus legitimized to buy land within the concession? Or did the formal fact of recognition that the territory within the British settlement belonged to China, that China was the owner of an ultimate sovereignty, withdraw them from the status of foreigners while, paradoxically, being insufficient to protect them from expulsions and forced expropriations? The Land and General Regulations do not offer a clear answer to this question, but they do offer meaningful indicators. They gave the consular authority the right to rescind subleases to foreign citizens if the concessioner violated any norm of any regulations. Independent from the concessioner's nationality, however, it was possible to rescind a lease and repossess the land if the leaseholder allowed Chinese citizens to build or occupy a house inside the concession. The architectural, cultural, economic, social and juridical homogenization of the territory could support the presence of other Western citizens, if they respected British rules, but not of Chinese citizens. It was necessary to expropriate their possessions and expel those still within the concession, as Lord Elgin had been asking Prince Gong to do since 1860; and it was necessary to avoid (or at least try to avoid) a situation where they came back to live in it.⁴³

These goals required the definition of an efficient administrative system able to connect government and renters. The concession had to become a British trade outpost in northern China, but entrepreneurs had to take on the burden of Chinese land tax, essentially repaying the Crown the sums advanced to lease the land, and the expenses of developing and governing the concession.⁴⁴ So the entrepreneurs themselves, called annually by the consul – who was the chairman *ex officio* of all leaseholders' general meetings – established how much each leaseholder had to pay in proportion to the land owned and defined the scale of wharfage dues and mooring charges. In general meetings, the assembly of leaseholders elected an executive committee composed of three to five members with a chairman at its head. The committee had the power and authority to levy and apply rates and taxes,

⁴² British citizens also might lease land outside the settlement. The General Regulations following the Land Regulations also foresaw the possibility of a lease by Chinese citizens.

⁴³ In 1873 Mongan, writing to Hornby, Tientsin, 26 August 1873, in TNA: FO 656/44, stressed the importance of a relaxed application of the prohibition to sell a lot of the British settlement to a Chinese: 'the progress of events within the last six years (which period has been commercially characterized, first by the substitution of shipping agencies for the more purely mercantile agencies at this port, and secondly, by the establishment of a Chinese steamer company, which now competes with our steamer in the carrying trade), has rendered it still further expedient to relax the provision made in Rule IV against a Chinese subject being allowed to become a Land-Renter'. According to Mongan it would be sufficient that the Chinese obtain special permission from the British ambassador and agree to conform 'to the same conditions of tenure as those under which land is now held in the settlement by other non-British subjects'.

⁴⁴ The tax amounts to 1,500 copper cash per *mou* and had to be paid within 21 days after 30 September, every year (Art. 6).

administrate municipal funds and issue the normative measures (bylaws) necessary to reach the goals fixed by the assembly. Once adopted by the assembly and approved by the consul, the committee's bylaws had the same efficacy as the Land and General Regulations. The consul was also duty-bound to call the assembly when it seemed necessary, or when the committee chairman, or at least five leaseholders, asked for it. The chairman had to approve all decisions taken by the general assembly on questions of municipal character and general interest. Against the decision of the consul, it was possible to present an appeal to the ambassador in Beijing within seven days of the decision itself.

The administrative system chosen by the Crown produced the expected fruits, and soon the settlement became a model for the other European concessionary powers. As pointed out in August 1896 in a memorandum written by the German consul in Tianjin, Ludwig Loeper, to the ambassador in Beijing, Gustav Adolf Freiherr Schenck zu Schweinsberg, the Crown and municipal authority had very skilfully defined which lands were to be subleased to the best bidder and which to be destined to public purposes. Above all, in identifying clear rules to avoid real estate speculation, they had ensured the concession's development. Thanks to the surplus resulting from the sale of land, the revenue generated by the taxes on the vessel traffic and the decision to impose on investors the costs of urbanizing areas neighbouring individual lots, the Crown had been able to anticipate the sums needed for expelling the Chinese and expropriating their possessions. At the same time, it had been able to replenish the lands along the river and provide docks and an adequate road network. Without a Chinese population and now 'well-organized', the settlement had attracted British and Western investors, with only a few plots now owned by the Crown. This had led to fast-rising prices within the settlement and, by the end of the century, to a new interest in the Chinese properties outside the settlement itself or within the Chinese city of Tianjin.⁴⁵

The British municipality, taking advantage of China's political weakness and fearing the competition of Japan, Germany and other Western powers that had already arrived or were ready to land in Tianjin to claim their share of the booty, began to buy land outside the settlement and prepare for its extension. This was accompanied by the introduction of a new contractual system, according to which buyers no longer had to pay the entire 99 years of rent at the time of the contract, but just an annual fee. The lessee continued to have the title of real owner, always without being formally authorized to sell to Chinese, but the lessor could easily adjust the rent to the rise in prices or to the increase of demand.

3. THE FRENCH CONCESSION

Formally speaking, the British were not the first to obtain the recognition of the right to a concession on the right banks of the Hai River. On 29 May 1861, Chung

⁴⁵ Ludwig Loeper to Gustav Adolf Freiherr Schenck zu Schweinsberg, 7 August 1895, *Promemoria betreffend die Gründung einer deutschen Niederlassung in Tientsin*, in Auswärtiges Amt, Politisches Archiv (hereafter PA AA) RZ 9208 R 1040, B. 2, August 1895–October 1895, 55r–55v.

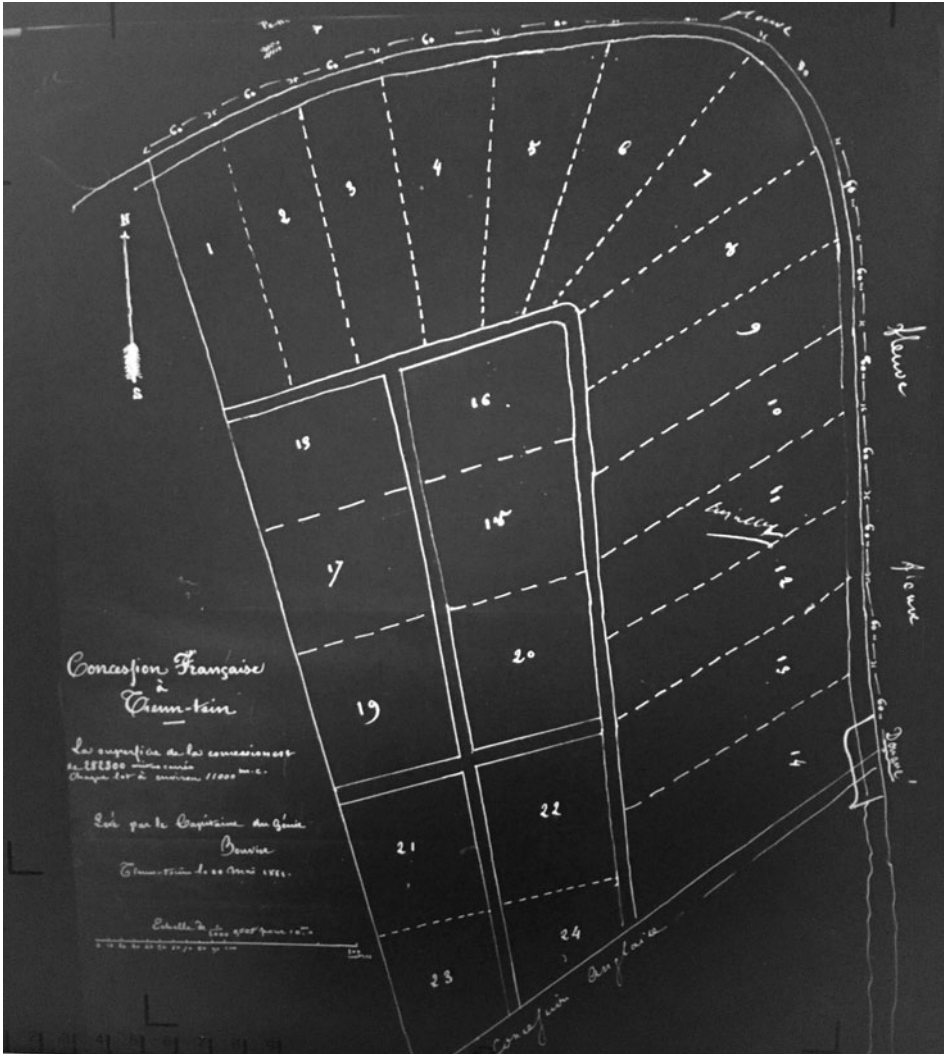


Figure 2. Map of the Concession française à Tientsin.⁴⁶

Hou issued a Proclamation establishing the borders of the future French concession and officially announcing its existence [see Figure 2].⁴⁷ It was the response to a direct request by Auguste Trève, head of the French consulate in Tianjin, which the Chinese official had found established ‘in law and justice’. The French request seems to have

⁴⁶ This map is attached to the Proclamation du Surintendant des trois ports du Nord à Tientsin, 29 May 1861, in Archives du Ministère des Affaires Étrangères (hereafter AMAE) (Paris), NS Chine, Vol. 286, Concession française de Tientsin 1861-1897 (148 CPCOM P/19231).

⁴⁷ On the French presence in Tianjin see P. Singaravélou, ‘Dix empires en un mouchoir de poche, le territoire de Tientsin à l’épreuve de phénomène concessionnaire (années 1860–1920)’, in H. Blais, F. Deprest and P. Singaravélou (eds.), *Territoires impériaux: Une histoire spatiale du fait colonial* (2011), 271–95; Singaravélou, *supra* note 1.

disappeared from the archives of the Ministry of Foreign Affairs, but Chung Hou's Proclamation elucidates the beginning of the French presence in Tianjin.⁴⁸ It was not simply the result of an act of grace on Chung Hou's part but founded on the formal authority of Article 10 of the French and Chinese Treaty of Tianjin of 1858, expressly cited in the text. For French diplomacy, both from a legal and a symbolic standpoint, it appeared much more effective to ground the legitimacy of the French occupation on an international treaty rather than an administrative act indicating the unilateral intention of an 'obscure' Chinese superintendent.

The centrality of Article 10 was confirmed a few days later by the *Réglement relatif à l'affermage à perpétuité des terrains dans les limites de la concession Française a Tientsin* (2, 6, 1861), which stipulated that it had been issued on the basis of the Proclamation, with the signatures of Kleczkowski and of the same Chinese superintendent.⁴⁹ Its introduction attributed to Article 10's authority the French right to the perpetuity of concession. Yet the Article calls exclusively for the possibility of '*louer des maisons des magasins o bien affermer terrains et y bâtir lui-même des maisons et des magasins*', establishing its objective as the construction of areas dedicated to the investment of French businesses in cities open to foreign commerce.⁵⁰ The perpetuity as a temporal factor qualifying the tenancy contract of the concession was not imposed by Article 10 or, in fact, by any element in the entire treaty. The concession resulted from a violent territorial occupation that no interpretation of the treaty could legitimize; the Chinese Empire would be forced to endure it under the 'most favoured nation' principle whenever a new power requested it.

The need to respond to the provisions laid out in the Tianjin Treaty led Chung Hou to issue another Proclamation a few months later, the subject of which was a large plot of land along the Hai River, 60 miles east of Tianjin, among the Dagu Forts [see [Figure 3](#)].⁵¹ This concession, situated in a strategic position from a military standpoint, would strengthen French presence in the area: the forts had been at the centre of the Second Opium War and their conquest had determined the victory of the Anglo-French troops – to control them meant controlling the Hai River and access to the city of Tianjin.

In the letter accompanying the translation of Chung Hou's Proclamation, the French consul in Tianjin, Henri-Victor Fontanier, informed the legation secretary of the concession's location, attaching some of his sketches, underlining its importance and giving news of a tenancy request for a fort within the concession from a protected French citizen. This was an eagerly awaited request, because a year and a half

⁴⁸ Proclamation du Surintendant des trois ports du Nord à Tien-Tsin, 29 May 1861, *supra* note 46.

⁴⁹ The regulation is attached to a letter from the French consul at Tianjin, Charles Dillon, to the French ambassador in Peking, Frédéric Albert Bourée, Tientsin July 1881, in AMAE (Nantes), Ambassade de France en Pekin 513po/1/262, Concession de Tientsin, dossier 36.

⁵⁰ 1858 Treaty of Peace, Friendship, Commerce and Navigation, Art. XII. 'British subjects, whether at the Ports or at other places, desiring to build or open Houses, Warehouses, Churches, Hospitals, or Burial-grounds, shall make their agreement for the land or buildings they require, at the rates prevailing among the people, equitably and without exaction on either side'; 1858 *Traité d'amitié, de commerce et de navigation conclu à Tien-Tsin*, in L. de Reinach (ed.), *Recueil des Traités conclus par la France en Extrême Orient (1684–1902)* (1902), 52–3.

⁵¹ Proclamation 16 December 1862, in AMAE, Ambassade de France en Pekin 513po/1/262, Concession de Tientsin dossier 42/1862.

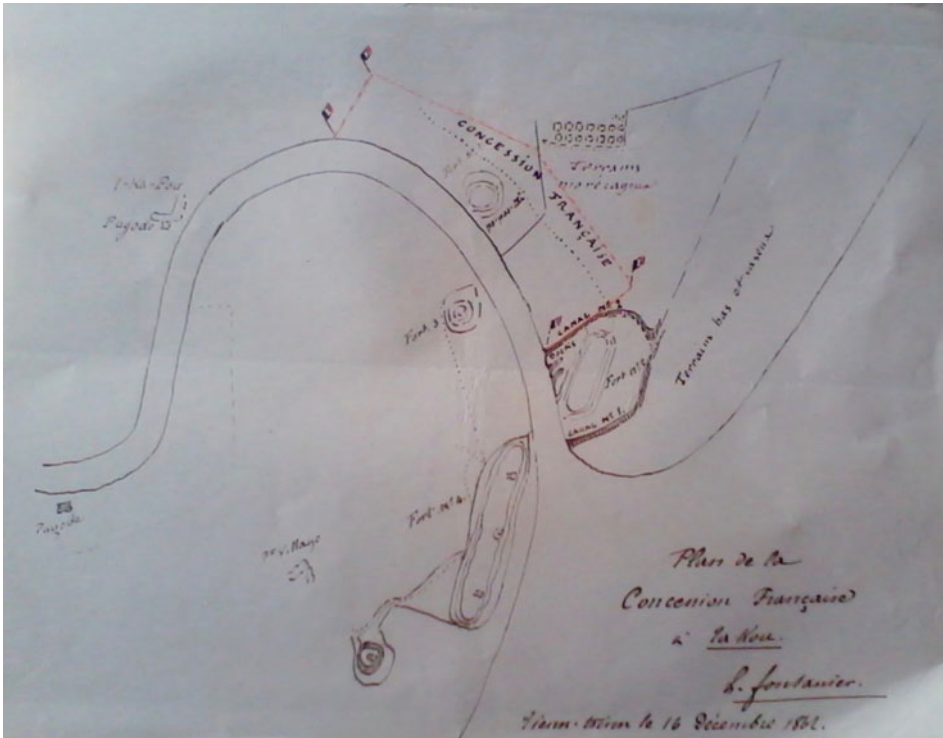


Figure 3. (Colour online) Plan de la Concession Française à Ta Kou.⁵²

after Chung Hou's first Proclamation there were very few Westerners, who were desperately needed to affirm French identity, in the French settlements. As with the British settlements, new territorial definitions or mapping was not enough; they needed indelible signs on the territory to make it homogenous and clearly indicate French authority. There was an ulterior motive for Fontanier's courteous insistence that Kleczkowski accept a request for a fort by an Italian subject called Sandri: it would allow the consul to '*faire valoir immédiatement nos traités*'.⁵³

It would be an instrument for strengthening an agreement whose legal foundation was not easy to identify. France too should have had a concession in Tianjin and France should be granted the perpetual right to the property included in the concession, but its prerequisite could not be the unilateral declaration of a Chinese official. On the one hand, French privileges formally deferred to the regulatory force of an international treaty, which had sanctioned the different value of the two contracting parties and which, in this case, voided Chung Hou's provisions, transforming them into acts of duty, devoid of any discretion. On the other hand, those privileges needed

⁵² Ibid.

⁵³ Henry-Viktor Fontanier a Michael Kleczkowski, December 1862, in AMAE, Nantes, Ambassade de France en Pékin 513po/1/262.

to be tangibly enjoyed. Their very existence was unthinkable without their execution. The occupation of Chinese land therefore constituted the originating deed from which legitimacy, agreements and declarations could be drawn, and concurrently the necessary conditions for those same agreements to carry out their constitutive validity.

Nevertheless, the factual dimension on which the concession was based was not without problems. Around 20 years after its formal establishment, Charles Dillon, consul in Tianjin from 1870 to 1883, confessed in a letter to the French ambassador in Beijing, Frédéric Albert Bourée, that due to a fire at the French consulate, nine years after his arrival he had only just managed to find the Proclamation of 29 May and a map of the concession.⁵⁴ However, judging by the letter's tone, it appears evident that their discovery had not helped French officials to determine the precise extent of the concession, nor which rules to follow in forming and assigning plots or in establishing what compensation was owed to dispossessed Chinese citizens. Yet on 2 June 1861 regulations were issued that clearly indicate the process by which citizens and the protected French should have had access to the distribution of concession land. Recourse to an administrative procedure seemed the best solution, able to create clear expectations: they allowed France to measure its conceded land, transform it into plots to assign to French businessmen and merchants, and control its repartition and use. The consul was entrusted with overseeing the whole procedure, bringing about communication between two distant worlds. Interested parties had to address requests to him, and, in agreement with the local authorities, his double task was to verify application conformity by means of plot inspections and to follow the very delicate procedure of dispossession.

In the hope of generating interest in the plots, the consulate prepared pre-filled applications in which investors could easily insert their details and supporting statements. But the application forms were also intended to integrate and clarify the administrative regulations. Although the Regulations' 12 Articles were exclusively addressed to French citizens and those under French protection, the application forms acknowledged the right of all Westerners to invest in the concession on condition that they had advance authorization from the French consul and recognized its jurisdiction. Natives, meanwhile, were expressly denied the right to purchase concession land,⁵⁵ yet due to very limited numbers of compatriots either present in Tianjin or interested in settling in the concession, the French authorities believed that immediate expropriation of all land owned by Chinese was 'contrary to equity and justice', preferring instead to decide in each instance when applications were received.

⁵⁴ Charles Dillon a Frédéric Albert Bourée, Tientsin July 1881, in AMAE, Ambassade de France en Pekin 513po/A/262, Concession de Tientsin, dossier 42/1862.

⁵⁵ '... dans le cas de vente ultérieure de nos droits d'affermage de ces terrains nous nous engageons expressément à ne pas les vendre à des chinois ... et nous nous engageons à en observer toutes les obligations – notamment elle de ne transferer nous droit à aucun étranger, sans l'autorisation du consul de France et à la condition par l'acquéreur étranger de sa sommer formellement à la juridiction consulaire française'. The application form to buy land within the French Concession of Tianjin, dated 1862, is in AMAE, Ambassade de France en Pekin 513po/A/262, Concession de Tientsin, dossier 42/1862.

On the more profitable land by the river, the consul had to collect from the buyer half of the total price (60 *taels* per *arpent*) and deliver it to the owner, who had been subjected to dispossession. The other half was allocated to the cost of the transcription of the act, the construction and maintenance of roads, bridges and quays, and the institution and maintenance of a police force. For all other plots of land, the compensation owed to the Chinese consumed the French investors' financial duties. This was not limited to the expropriated land, but it was extended to the property present on the land and even included a small sum in compensation for the inconvenience endured by the Chinese families. The Chinese inhabitants and the real estate had been meticulously recorded by the magistrate of Tianjin and delivered to the French first legation secretary. Signed and sealed by the two authorities, the list became an authentic legal act which certified the Chinese presence within the concession, avoiding, as the French intended, an increase in Chinese residents and excluding any form of reimbursement for buildings built after the proclamation of the regulations.⁵⁶ On 15 December every year, the buyer had to deposit the continual rental charges (2,000 *sapeche* per *arpent*), designating half to the Chinese government and half to the consulate to be utilized for the concession's improvement and security. At the same time the lessee received an authentic act '*de bail a perpetuite'* from the consul which, paradoxically, constituted a property deed with a perpetual guarantee of his right.

In 1865 a translated copy of the regulations was sent to the British consul. In the accompanying note Gabriel Deveria, a consular interpreter at that time undertaking consular functions, included a reminder that the French government had to integrate the administrative regulations in order to offer the British consul's compatriots the opportunity to invest in the concession. Even if their 12 Articles were addressed exclusively to French citizens, the serious scarcity of investors and limited economic activities in general encouraged the consular authorities to consider concessionaires of other (Western) nationalities and accept the presence of locals. The latter were prevented from buying land within the concession, but they were allowed to live in it.⁵⁷ The only two limits Deveria expressly recorded concerned maintaining the settlement's French character, which could not be challenged, and the concession's particular legal system, to which every resident had to submit.

In 1874, the regulations had still not been integrated and it was still unclear whether non-French Westerners were allowed to invest in the concession. On receipt of an application from a Portuguese investor interested in opening a recreational arcade on the river, Dillon had to take advice from his ambassador in Peking. The regulations implicitly excluded this possibility but it was time to move in another direction: '*Nous sommes si peu de Français en Chine que si l'on ne permet pas aux étrangers d'acheter un lot de terrain, jamais la concession français d'ici ne perviendra à l'être habitée*'.⁵⁸ The land was still not raising sufficient interest, and in the hope of launching the

⁵⁶ The Chinese were able to continue to build but would not receive any compensation for new buildings (*Règlement*, cit., Art. V).

⁵⁷ Gabriel Deveria to James Mongan, Tientsin, 7 January 1865, in AMAE, Consulate de Tientsin, 691/po/1/180.

⁵⁸ Charles Dillon to Luis de Geofroy, Tientsin, 18 February 1874, in AMAE, Consulate de Tientsin, 691/po/1/173. The application of the Portuguese citizen De Castro is dated 18 February 1874.

concession's economic development it was necessary to open up opportunities to foreign investors. The absence of buyers was indeed the most serious danger to the production of a new social space and French identity in the concession, but the few investors who had appeared interested clashed with the uncertain administrative procedures and the fluidity of the concession's borders. While the administrative regulations of 1861 had contained very precise indications, each consul's practical interpretation had introduced his own system for distributing plots and editing applications. What's more, the Hai River floods had caused the disappearance of the stone marking the concession's Western border, allowing the Chinese owners to redefine the borders to their advantage and construct new buildings with the conviction that they would not be dispossessed.

This was confirmed in 1872 by the words of the French ambassador in Beijing, Luis de Geofroy, according to whom the substantial disinterest shown by the French towards the concession precluded a request for rigorous respect of its borders and a serious application of France's 'indisputable right' to the territory. Nine years later, the situation appeared even more serious and this dictated, according to Dillon, that the French act outside of legal logic, assuming equity, convenience and interests as guiding criteria in political action.⁵⁹ In a long message despatched to Bourée in July 1881, he evoked both the lack of any proof which could identify who was responsible for moving the border stones and the solely theoretical nature of French law in view of demolition, while stressing its deep material injustice: the concession's border cut straight through a housing cluster rented out by village chiefs to particularly disadvantaged Chinese families who had been expelled by the British concession and then by the French. Although these people, according to Dillon, were probably not faultless, demolishing their houses was an excessive form of punishment which could risk being '*mal compris du public et de surreter contre nous, dans la localité, les sentiment national des indigenes*'.⁶⁰ It was therefore necessary to acknowledge that the occupied land had an extremely limited extension, and that no one had applied for it in all those years; at the same time it was just as necessary to appear firm in the face of the excessive Chinese requests. In fact, the taotai of Tianjin had requested the written surrender of not only the right of expropriation without compensation, contained in the regulations of 1861, but also the right to purchase Chinese properties outside the concession, which was considered France's entitlement according to a broad interpretation of Article 10 of the Tianjin Treaty.

Aware of the difficulty in which the concession was placed, and the risks the eventual hostility of the local population would bring about, Dillon preferred a change of interlocutor and he turned to the viceroy, whose decision seemed to offer both parties an honourable compromise. The French were granted the right to go ahead with a census and the measurement of the (new) buildings present along the border within the concession, allowing Dillon to affirm that the viceroy had implicitly acknowledged the concession and accepted the (new) western border. At the same time, the viceroy would consider the presence of new buildings as

⁵⁹ Geofroy's letter of 13 July 1872, was addressed to Dillon and reported by Dillon himself.

⁶⁰ Charles Dillon to Luis de Geofroy, Tientsin, 18 February 1874, in AMAE, Consulate de Tientsin, 691/po/1/173.

fait accompli and likewise implicitly affirmed the right of the Chinese owners to compensation in the case of expropriation.

The taotai was not happy with this decision and continued to obstruct the measurement operation, stirring up the Chinese residents and openly declaring that the '*force resterait à la loi*'. Once again, the intervention of the viceroy resolved the situation. He called for the taotai and reprimanded him, in the presence of the consul, to the point that he declared to Dillon that he was ready to 'underhandedly' help them purchase houses from owners situated on the other side of the concession border.

The life of settlement was still not easy, however: investors remained few and urbanization was slow. The decision not to immediately expropriate Chinese property and expel residents had proven unsuccessful. As we have seen, the French system, based on the consul and its mediation activities, imagined that the sums for replenishment activities and the construction of docks, bridges and roads would come from half the agreed price of the plots along the river – the most lucrative but also the ones that needed most work. Subordinating urban planning to the sale of land lots was a shaky move, and its consequences impacted adversely on the development of the concession, making for an embarrassing comparison with the British settlement. French investors had not arrived and without them there was little that could be done; meanwhile, the expulsion of Chinese residents could not be pursued, and the French concession had inevitably become a place of residence for Chinese officials and well-funded 'natives'. If we then bring together information from the map of the concession attached to the municipal regulations of 1894 with that offered by the memorandum by the German consul in Tianjin, Ludwig Loeper, which as we previously saw praised the British system, the reasons for its non-development are even clearer [see [Figure 4](#)].

The map shows that in the French concession the consulate and the municipal government occupied two lots, while the Chinese government owned three lots and on them were the Custom House, the Telegraph and the Admiralty Office. A French citizen owned three small plots and a Russian citizen was the owner of two larger ones on the river. All the rest belonged to the Jesuits and the Lazzaretti. In fact, the two religious orders, taking advantage of the French protection of Christian missionaries, lack of competition, public auctions, and of a price per *mou* that ranged between 30 and 60 *taels* (when the British concession had achieved 2000 *taels* per *mou*), had moved as skilled speculators. They bought up most of the land and waited for the best time to sell. That time had not yet arrived because construction works were lacking and the concession was still inhabited by Chinese, but also because it was in a position that was objectively less favourable than the British one: the land was largely marshy, requiring large-scale remediation to adapt it to European standards, and docking at the stretch of the river flowing along the French concession was by no means easy.

By 1896, however, the conditions for its relaunch were beginning to appear. A dramatic rise in land prices in the British settlement due to declining supply and growing business and entrepreneurial activities was pushing increasing numbers of Europeans and European companies towards the French concession; the Jesuits and Lazzaretti finally began to sell.

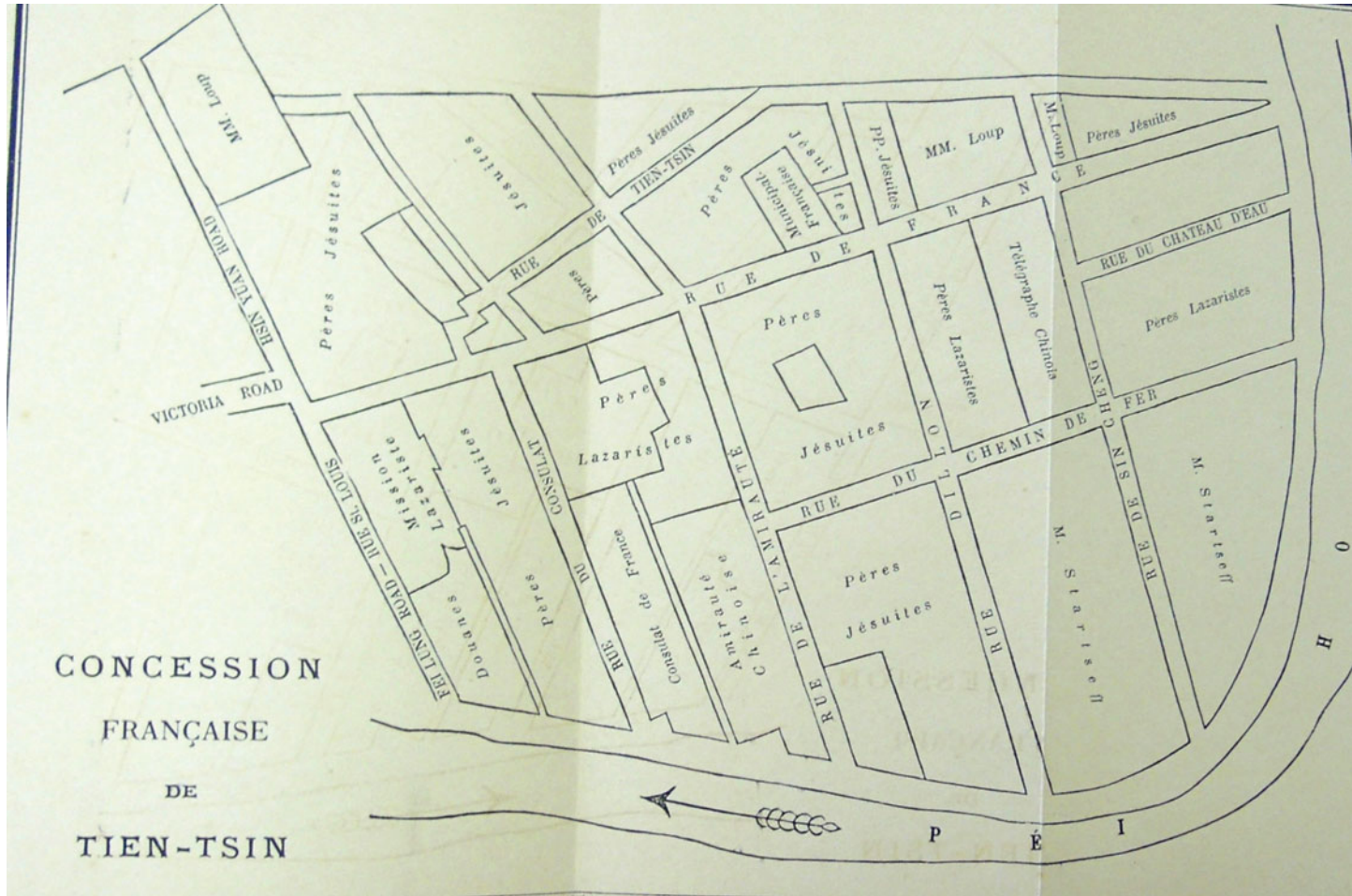


Figure 4. (Colour online) Concession française de Tientsin⁶¹

4. A NON-EXISTENT CONCESSION

The origins of the US concession are even more uncertain. The US did not take part in the Second Opium War and remained neutral in the two years between the Tianjin Treaty and the Beijing Convention.⁶² In any case, applying the most favoured nation clause, they had obtained the same territorial privileges as the other treaty powers. A 'tract of land' above the Hai River was thus let to them, but as we learn from correspondence between Charles Denby, the US ambassador in Beijing, and Richard Olney, the US secretary of state, in 1895, the archives of the US consulate in Tianjin had no official document relating to the acquisition of territory, not even a simple receipt of payment as in the British case, and did not offer any information about the way by which the distribution of plots of land to US citizens living there had been carried out [see Figure 5].⁶³

The reason for this silence, according to Denby, was due to the absence of an ambassador in Beijing until July 1862, and of a consular representative in Tianjin until 1866.⁶⁴ Regardless, Denby claims that there was no lack of evidence for a legitimate US presence. In the mid-1880s, faced with Germany's attempt to open a settlement in Tianjin dangerously close to that assigned to the US, Denby tried to redirect the State Department's policy towards Tianjin, hoping that his government would take a more active role in promoting US entrepreneurial and commercial activities. The archive's papers proved, according to him, that in October 1860 the US had obtained, together with Britain and France, a plot of land from Chung Hou, with well-defined borders, over which US consuls had exercised full jurisdiction for 20 years.⁶⁵ None of these documents have survived, however, and Denby tellingly presumes that if US entrepreneurs had come that far, even if there were more 'desirable' places, then there had to be an 'understanding, perhaps a definitive agreement' determining their presence.⁶⁶

An earlier confirmation of the absence of any official agreement comes from the memories of the first official US representative in Tianjin, John Meadow, collected by William Pethick, another US vice-consul, and forwarded by him in a letter of 8

⁶² Still useful is the classic work by T. Dennett, *Americans in Eastern Asia: A Critical Study of the Policy of the United States with Reference to China, Japan and Korea in the 19th Century* (1922); see also J. King Fairbanks, *Trade and Diplomacy on the China Coast: The Opening of the Treaty Ports, 1842–1854*, 2 vols. (1953). With closer reference to the legal aspect, the recent book by T. Ruskola, *Legal Orientalism* (2013); also J. Kroncke, *The Futility of Law and Development: China and the Danger of Exporting American Law* (2016).

⁶³ C. Denby, *The American Concession at Tientsin*, 4 (enclosure 1 to Charles Denby's letter to Richard Olney, 3 August 1895), in National Archives and Records Administration at College Park MD (hereafter NARA), Microfilm Publications, Despatches from US Ministers to China (1843–1906), M 92, R 99.

⁶⁴ C. Denby, *supra* note 63, at 5–6. The first consular representative of the United States was actually a simple American citizen, Meadows, living in Tientsin who in 1866 'was appointed acting U.S. consul'. On the role of Burlingame see J. Schrecker, "For the Equality of Men – for the Equality of Nations": Anson Burlingame and China's First Embassy to the United States, 1868', (2010) 17 *Journal of American-East Asian Relations* 9–34.

⁶⁵ The US settlement extended over an area of 23 acres, from the river to Taku Road and from the southern part of the British concession to the cemetery, see Denby, *supra* note 63, at 4. See also short notes in Rasmussen, *supra* note 1, at 36; Clifford Jones, *supra* note 1, at 129–30; L. Bernstein, *A History of Tianjin in the Early Modern Times, 1800–1900* (1988).

⁶⁶ Denby, *supra* note 63, at 8.

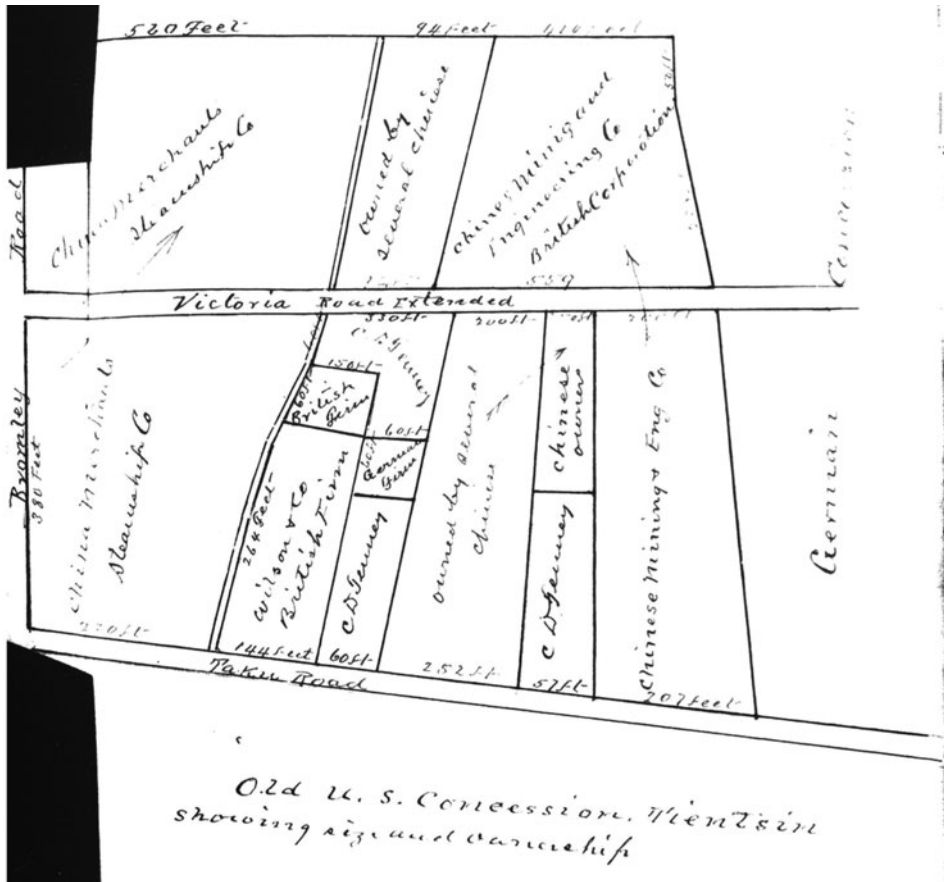


Figure 5. The Map of the US concession⁶⁷

September 1883, to consul James C. Zuck.⁶⁸ Pethick joined the US consulate at Tianjin in 1872 as an interpreter, later holding the position of a vice-consul from 1873 to 1875 and a second time from 1885 to 1893. Meadow had forwarded all documents in his possession to his successor, Eli Sheppard, and Pethick had catalogued them but discovered neither a founding title nor indications on how the distribution of the land occurred or who the legitimate owners had been. Interviews with the then elderly Meadow were not very useful. Meadow was present when Chung Hou chose the land for the British, French and US concessions and was able to indicate the borders of the concession clearly, but in the late 1870s and early 1880s there was no

⁶⁷ The map of the American Concession is enclosed with a letter written by the US ambassador in Beijing, Edwin H. Conger, to the Secretary of State John Hay, 21 January 1902 (1843–1906), in Nara, Microfilm Publications, Despatches from U.S. Ministers to China (1843–1906), M 92, R 116. It has also been published by N. Vaichbourdt, 'De la «me too policy» aux ambitions contradictoires: la brève histoire de la concession américaine de Tianjin, 1860-1902', (2014) 382/383 *Outre-Mers. Revue d'histoire* 27, at 33.

⁶⁸ William N. Pethick to James Zuck, 8 September 1883, in Nara, Microfilm Publications, Despatches from U.S. Ministers to China (1868–1906), M 114 R 5.

reason to continue such research, or more generally worry about sure evidence. The US right to own a concession was not questioned and although it was obtained in an almost undocumented way, North American investors and traders bought land in the concession from the beginning of the 1860s; they were certain to be subjected to the control of the US government.⁶⁹

In addition, the British, particularly Mongan, with whom Pethick had examined a ditch in the British settlement that was assumed to be a boundary between the two concessions, considered the US concession a fact and recognized the US consul's authority, to the extent that they told the only British citizen living in the concession to turn to the US consul if he had problems with the Chinese. There was also evidence that the Chinese officially recognized the existence of the US concession. Pethick reported the case of a Mr. Chu, a Chinese citizen who, having inherited a plot of land along the Hai River in the US area, decided to invest on it, building warehouses, shops and houses. He also gave the consulate the opportunity to build a quay at his expense and guaranteed that he would maintain a police force and cover all sanitary expenses. In exchange he asked for the payment of the wharfage dues and mooring fees. Even if it was rejected, Chu's request was decisive: Denby from now on had a different view of the concession, establishing a local police force, beginning to tidy up the roads and introducing a light taxation system on houses and shops, Pethick says, with residents' approval. The land within the concession began to show clear signs of US governmental power. US sovereignty was evident, and both Western nations and the Chinese took note of it. Pethick insisted that never, in the several conversations he had with Chinese Customs' Taotai about the concession, had the US right to have a concession or the continuity shown by the US exercising its sovereignty been questioned.

So what led to the severe neglect into which the concession fell after 1880, when Consul William Mangum proposed demoting the concession to the Chinese government, reserving for the consular authorities only the right to establish suitable municipal regulations whenever it seemed desirable? Why were funds used to build an impressive protection wall for the consulate instead of improving roads and quays? Why had the efficient local police force been cast off? And why did the arrival of 'five Chinese soldiers in rags' justify the evacuation of a settlement that after two years of real occupation had become 'very sleek and well-dressed'?⁷⁰ Pethick's letter does not give the reason but argues that it was still worthwhile to take up the control of the concession even without fellow countrymen or evident economic interests, because defending their rights would help all the foreign settlements:

Passing across the boundary of any Foreign settlement into Chinese quarters is like stepping from a garden into a sty; the further off we can keep the sty, the better it will be for us – if not for our bacon.⁷¹

Understandably, however, the Chinese authorities took Mangum's offer seriously and tried to take advantage of it. They announced that they would adopt all measures

⁶⁹ Ibid., at 8.

⁷⁰ Ibid., at 9.

⁷¹ Ibid., at 8.

fit for guaranteeing US interests, but reserved the right, if US consuls again took control of the concession, to verify the existence of any impedimental conditions and re-determine the formalities of its administration.

Unlike France and Britain, the US had not supervised the distribution of plots of land or their sale, thus compelling US buyers to buy directly from the Chinese government. Yet there was no doubt, Denby wrote in 1895, that the US got their concession at the same terms and times as the two European powers, and continued to be, formally, its legitimate owner. Moreover, he pointed out, the two European powers had enlarged the original prerogatives; at the same time no concession was based on a treaty but on unpredictable practices, habits and uses. It is unclear whether Denby was referring to the concessions in Tianjin or more generally to settlements in the Chinese treaty ports, but his letter starkly reveals the ambiguity of legal discourse in colonial and semi-colonial contexts.

Denby's words also revealed the weakness of the US claims. Outside the law, the law could be respected only by transforming social space; in other words, transforming a part of China into something similar to the US and where the authority of US consuls was visible. The concession's delayed urbanization, the lack of exercise of legal powers and finally Mangum's letter to the Chinese governor weakened Denby's arguments. 'I do not propose at this time' – wrote the ambassador on 31 July 1895 to the Tsungli Yamen – 'to present a full argument on the question of the right of my Government to retake jurisdiction over the ceded territory. It will be time to do this when the right is disputed'.⁷² The US had not shown much interest towards this strip of land along the Hai River, but expressed concern regarding the colonial policy of the other powers interested in opening settlements in Tianjin and strengthening their presence in the area. The German Reich was trying to obtain a lease agreement, and the new Eastern power, Japan, after assuming control over Korea with the victory in the war against China, would not delay starting an expansionist policy inside the Chinese ports.⁷³ 'I have understood', Denby wrote to the Tsungli Yamen and the viceroy, 'that proceedings are pending having for their object to cede the territory mentioned to one or more other powers. Against such cession or attempt at cession I enter my solemn protest'.⁷⁴ His aim was to protect and boost US entrepreneurs' investments and commercial activities in northern China, which meant avoiding the formal cession of even a small part of the US concession.

In his answer to Denby, Olney shared his analysis but not his conclusions. In the mid-1890s, the State Department was becoming increasingly conscious of the economic relevance of the Chinese market and desired a more important role on the Eastern chessboard, yet the policy of non-interference had not yet been abandoned: Olney asked Denby not to take any further initiative. On the one hand, US economic interests and properties were guaranteed by the 'unequal' treaties, which were the

⁷² Denby to the Zongli Yamen, 31 July 1895, at 3 (enclosure 3, Denby's letter to Olney, 3 August 1895), *supra* note 63.

⁷³ S. Paine, *The Sino-Japanese War of 1894–1895: Power, Perceptions, and Primacy* (2003).

⁷⁴ Denby to His Excellency the Viceroy (enclosure 2 to Denby's letter to Olney, 3 August 1895). On the lines of Denby's diplomat policy see David Anderson, *Imperialism and Idealism: American Diplomats in China 1861–1898* (1985), 144 ff.

legal framework in which all Western policy in China took place, and where the rivalry between the different powers developed and the entrepreneurial activity of traders and commercial companies was defined. On the other hand, legally speaking, the US had never had any jurisdiction over its so-called concession. Its claims on the territory did not derive from a lease agreement, of which no documental evidence existed, or from the exercise of a normal administrative activity, which had long been abandoned, but simply from the diplomatic courtesy of the Chinese government. China, in Olney's eyes, recognized that the US only had 'a right of comity' and the legitimate claims of the US dated back to this. In other words, the strange *comitas* in an oriental version imagined by Olney not only obliged China to accept limitations to its own jurisdiction, even if there was no reciprocity, but produced a further compression of Chinese sovereignty, granting the US the right to obtain, as Britain and France had done, a plot of land and to call it the 'American Concession'. This right was in any case followed by no real interest: the US government had not bought any territory nor made formal agreements, eventually abandoning the powers given to them. In the light of these considerations Olney did not consider his country to be in the position 'to maintain that we are entitled to resume jurisdiction over the tract, even if it is considered desirable to do so'.⁷⁵

The history of the Western concessions in Tianjin is not a story that can be told from an exclusively national point of view. Tianjin was a complex, hybrid space, between East and West, defined by social practices, symbolic representations, and legal categories which did not coincide simply with the area defined by the entity as a state, nation, or city. On the contrary, it was an imperial location placed under different foreign powers in competition and co-operation between them and crossed by different and unstable strategies of governance as well as equally different and unstable Chinese forms of resistance or negotiations. This continuous uncertainty and the multiplicity of interests involved is reflected as a thread running through Olney's and Denby's papers, emerging from the letters of the consuls in Tianjin, and it is confirmed by the Chinese *taotai*'s request, projecting on the small plot of land known as the American concession the uncertainty of the US diplomacy in China.

A few days after Olney had sent his letter and before Denby had confirmed its receipt, the political scene in Tianjin changed: on 30 October 1895 Germany had obtained its settlement and now asked the US not to raise objections to the works necessary to extend the two roads linking the new German settlement with the British concession.⁷⁶ The two roads had to cross a territory that formally still belonged to the US, which the Reich wanted to buy. Getting the assurance that his fellow citizens could dwell and buy land within the German concession under the same conditions foreseen in the British settlement, Denby invited the US consul in Tianjin, Sheridan P. Red, to release the necessary authorizations and informed the

⁷⁵ Richard Olney to Charles Denby, Washington 18 October 1895, in Nara, Microfilm Publications, Diplomatic Instructions of the Department of State (1801–1899), M 77 R 42, 265–8.

⁷⁶ Denby received Olney's letter at the beginning of December 1895. His answer is dated 25 January 1896, in Nara, Microfilm Publications, Despatches from U.S. Ministers to China (1843–1906), M 92 R 100, 1–4.

Secretary of State.⁷⁷ ‘The ultimate question’ still concerned the ‘so called American concession’. It still was not clear what was to be done. The indications received from Washington and above all events going on in Tianjin induced Denby to consider that a re-assumption of US jurisdiction was unlikely. In any case, the matter continued to have an importance, such as that it ‘may well be kept under advisement’. Only 30 days later the situation became clearer. The US consul in Tianjin, in a letter to Denby asking for further instructions, confirmed the inappropriateness of resuming jurisdiction on the concession. According to him, due to the work of US officials, the Chinese government would still prefer that the US exercise their jurisdiction again, but too many things had changed: the State Department thought there was no longer any use in remaining in Tianjin, the Germans pressed for a definite answer, and inside the concession there was very little land left at the disposal of US investors. The concession seemed indefensible, and Denby was convinced that:

it was inadvisable to make any claim whatever. We have not a single American merchant at Tientsin. The American missionaries already own valuable tracts of land. There seems to be no reason why we should be embarrassed with a useless jurisdiction.

The ambassador requested that the State Department issue simple and clear instructions on how to deal with the German claims, and above all whether he should notify the taotai of the abandonment of the claim of any legal right on the land in question.⁷⁸

While Denby was awaiting further instruction, more serious problems worried the Western community in the north of China. The defeat of China in the first Sino-Japanese war and the opening of a German and Japanese concession had modified Tianjin’s fragile political balance. At the same time Chinese resentment and anger at the intrusive presence of the Western powers and Christian missionaries were coalescing in the Boxer movement. On 20 June 1900, when the first Western contingents arrived, the German ambassador had been killed, causing outrage in the international community and a violent reaction from Germany. Only seven days after the murder, German troops embarked from the port of Bremen, souls inflamed by the Kaiser’s words: ‘the Chinese have overturned international law ... and will never again dare to look cross-eyed at a German’.⁷⁹

5. CONCLUSION

The killing of the German ambassador and the ongoing war marked the beginning of a new phase in the history of Tianjin, dispelling nascent illusions about the possibility of entrusting relationships between Western powers and China to international law.

⁷⁷ The official answer of the German consul in Tianjin to Denby’s request is enclosed in the letter addressed to Olney dated 25 January 1896, also in Nara, Microfilm Publications, Despatches from the U.S. Ministers to China, M 92 R 100 (1895–1896).

⁷⁸ Charles Denby to Richard Olney, Peking, 2 April 1896, *ibid.*, at 2.

⁷⁹ J. Prenzler (ed.), *Die Reden Kaiser Wilhelms in den Jahren 1896-1900*, B. 2, Leipzig, Reclam, 1904, at 209–12.

Commenting on the events, Jellinek wrote that the time had come to clear away myths and ‘popular beliefs’: international law was not a ‘necessary’ law and therefore it was not always applicable. Its validity was limited to the states that recognized it and accepted its binding character, and this was not the case for China.⁸⁰ For Jellinek the argument that China had adopted Western international law it was ‘unprovable’. Bowing to Western pressure, China had broken its traditional closed-door policy by accepting relations with the ‘civilized’ countries, but it continued to represent itself as the Middle Kingdom, considering foreign states as vassals and recognizing the privileges, not the rights, of their diplomatic representatives. The consequences were very serious and bore witness to a cultural lag. He wrote: China lacked awareness (*Bewusstsein*) that the progress of international law over time was inextricably linked to the recognition of the necessity and binding nature of international agreements and treaties. One day, Jellinek maintained, if China profoundly rethought its relationship with its own tradition, and introduced the reforms requested by the West, perhaps it could be admitted into the club of ‘civilized nations’ and enjoy its rights. In the meantime, in the long and uncertain wait, he entrusted China to the humanity that the victorious powers are obliged to respect as civilized nations, regardless of the barbarity of their enemies.⁸¹

Seen from Tianjin and its concessions, however, the history of relations between the West and China does not seem to be the history of an illusion or unrequited Western willingness. International law had never been a law to be exported. It was a product of the states of the Christian West and it could not be extended to those political bodies that did not share European history and values, and that did not satisfy the standards of Western statehood through which they were evaluated. International law was not only inapplicable in China, but the treaties that between 1842 and 1901 should have facilitated its entrance in the international community instead produced a violent compression of Chinese sovereignty.⁸² When relationships with the Celestial Empire were entrusted to consular law and diplomatic practice, the exceptionality to which jurists and diplomats confined China prevented it from participating in the production of international law and justified the application of exceptional measures. The perpetual lease agreement to which Britain, France and the US resorted to legalize the occupation, freeing the land included in the concessions from the Chinese sovereignty, is it an excellent example. The history of those concessions, as it emerges from the archive, is a confusing and ambiguous story of lost contracts and arbitrary interpretations. It shows how outside the West, property and sovereignty came to overlap with each other, recalling pre-modern legal solutions like in a play of mirrors, and showing what the legal discourse does not want to show.

The only true legal foundation of this story is grounded on the violence of land appropriation. Britain, France and the US had previously occupied the land that

⁸⁰ G. Jellinek, *China und das Völkerecht* (1898) in *Id. Ausgewählte Schriften und Reden*, B. 2 (1911), 491. On Jellinek’s article, see also S. Kroll, *Normgenese durch Re-Interpretation China und das europäische Völkerrecht in 19. und 20. Jahrhundert* (2012), 44–5.

⁸¹ Jellinek, *ibid.*, at 492.

⁸² L. Nuzzo, *Origini di una scienza. Diritto internazionale e colonialismo nel XIX secolo* (2012), 77–86, 202–21.

was granted to them. Of course, for their transformation into a new social space, as the US case clearly shows, occupation alone was insufficient. It was necessary to fix boundaries, divide land into lots, establish conditions of sale and make the new space architecturally and ethnically homogeneous by expelling the 'natives' as much as possible. Violence remained a constituent element of law. It is the other side of the law itself and it is indissolubly united to it. Law and wrong go hand in hand, but in order for law to function as the binary code of a social system, their unity has to be hidden.⁸³ The history of international law as a new scientific and systematic discipline, which has been told by European and US international lawyers since the nineteenth century, is the history of the concealment of that unity. From Tianjin we can reconnect international law and colonial discourse, revealing the ambiguous relationships between two different stories that for too long seemed doomed to run in parallel without ever encountering each other.

⁸³ N. Luhmann, *Die Gesellschaft der Gesellschaft* (1997), B. 1, 92.

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