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JHIL’s editorial board chose as its 2021 Spotlight, the article ‘The Politics of History in the Late Qing Era: William A. P. Martin and a History of International Law for China’ by Maria Adele Carrai (Journal of the History of International Law 22(2–3) (2020), 269–305). In the following interview, we take a closer look at the article ‘under the spotlight’, the motivations of its author and the research carried out. The interview was conducted by the managing editor of the JHIL, Raphael Schäfer, and JHIL’s student assistant, Maren Körsmeier.

JHIL: Maria Adele, congratulations on being selected by the editorial board for JHIL’s spotlight article of the 2020 volume! How did you cross paths with William A. P. Martin and his legacy in international law?

Maria Adele Carrai (MAC): Thank you. I came across William A. P. Martin when I did the initial research for my book, Sovereignty in China. Martin was a key figure for the translation and introduction of international law in China. His translation of Henry Wheaton’s Element of International Law in 1864 as Wanguo gongfa was the first systematic introduction of international law in China, with a language that has remained stable until now. The term we use today for sovereignty zhuquan was the one that Martin introduced, as opposed to many other legal terms that came from the Japanese language at the end
of the nineteenth century and the start of the twentieth century. The translation by Martin was fascinating; he had to introduce through a new language a novel view of the world order, one in which China was seen as inferior and lacking civilization. Translators are critical figures in such encounters. There are good reasons why many academic disciplines study their work and their multiple functions and facets: Martin manipulated the text and changed the translation of the original text to accommodate China in the broader discourse of international law. For example, he completely omitted Wheaton's description of China as incapable of international law due to its lack of civilization. Martin was also the first scholar to suggest that China already had an ancient international law. His legacy is related to the lexicon of international law that is still used in Chinese today and his reinterpretation of history and the idea that China had international law in the past. This contributed to giving China more legitimacy as a new member of international society.

JHIL: In your article you argue that international law shifted ‘from ius publicum europaeum to ius publicum universale’ (p. 272) in the eighteenth and nineteenth centuries. What is the difference between these two ‘versions’ of international law and was there not rather a ‘universal ius publicum europaeum’ in the colonial sphere?

MAC: The expansion of international law and the international system we live in today would not have been possible if such a ‘universalization’ of the ius publicum europaeum had not occurred conceptually. The possibility for other countries to be part of the so-called ‘family of nations’, at least in principle, allowed the ‘Oriental question’ to be a question in the first place. As discussed at the Institute de Droit International, that question of the applicability of international law to the Orient would have been a non-question within an ius publicum europaeum framework. In that framework, the geographical, temporal, and conceptual features of the family of nations and international law were reserved for states of European civilization. This framework had doctrinal prehistory in the writings of eminent eighteenth and nineteenth centuries scholars of international law. It was also made clear in the statute of the Institute du Droit International in 1873, which said that the only object of its attention was the ‘civilized world’ corresponding to ‘the West’, which meant Europe, extending to the Americas. The fact that Turkey and later Japan was admitted in the family of nations reflects a transformation in the way of thinking about international law, as a body of law that was potentially universal, without geographical limitations. And later, the possibility that China had a proto-international law in ancient times helped further universalize the European experience, temporally and spatially. Such claims to universality had obvious limitations, and international law, as an ius publicum
universale was still preached according to Western standards of civilization, as my book has shown. Therefore, I agree that it could be better characterized as a ‘universal ius publicum europaeum’ rather than a truly ius publicum universale, especially during the nineteenth century. Like many other polities, China was not considered an equal sovereign and not worthy of admission to circumscribed international society in the nineteenth century. However, the possibility of the universality of international law predicated on sovereign equality and self-determination ignited the hopes of partly colonized countries like China, or completely colonized and oppressed countries, to become part of international society. This would have not been possible if the ius publicum europaeum had not become, at least in theory, an ius publicum universale, or a universalized ius publicum europaeum. It is only in the course of the twentieth century, especially after the Bandung Conference of 1955 and after many states became independent, that an ius publicum universale gradually emerged. However, there are still many limitations to its universality, as Anthea Roberts recently observed.

JHIL: In one of your headings, you depict Martin as ‘God’s agent to open China to the Gospel and international law’ (p. 279). Could you tell us a bit more about the relation between religion and international law against the backdrop of Martin’s plan to introduce ‘religion blended with international law’ (p. 271)? What is the added value of this blend, and what role does the fact that Martin was a Presbyterian and not an international legal scholar play?

MAC: Martin’s bringing God’s Gospel to China and his Chinese translation of international law were part of the same mission of civilization that implied conquering China religiously and normatively. For Martin, introducing international law into China contributed to bringing to China’s atheistic government the God and the Christian eternal justice and indirectly ‘impart[ing] to them something of the spirit of Christianity.’ International law’s universality for Martin presupposed the existence of God and was inscribed in human hearts. A tight relationship existed between Christian religion and international law, as both relied on and preached Western Christian civilization’s superiority. International law and religion essentially went hand in hand with the arrival of merchants and missionaries in China, although missionaries were more in number and more invested. For instance, through international law, missionaries were again allowed on Qing soil (in Canton and Macao) after being banned in 1812. The 1842 Treaty of Nanjing ended the First Opium War, granting missionaries the right to live and work in the new five coastal cities opened to trade by the treaty. Later, the Treaty of Tianjin in 1860 ended the Second Opium War between the French and British and opened up China to missionary activity. While international law helped missionary activity, the missionaries helped international law spread, as
Martin’s translation of international law into Chinese reveals, and assisted in divulging it. Even before the translation, missionaries who were more engaged with the local circumstances than foreign diplomats or merchants were used as interpreters and advisers to negotiate treaties. The fact that Martin was a Presbyterian missionary and not an international jurist probably helped him go beyond the view that characterized most Western international jurists at the time, who doubted China’s ability to become a member of the family of nations. Even Wheaton, whom Martin translated to Chinese, in his original text said China lacked certain fundamental attributes essential to the regular and complete membership of the family of states governed by general international law. Martin’s manipulation of the original text and omissions in his translation reveal an important difference between Martin and other international scholars. While Martin was still orientalist and believed in the superiority of Western civilization, he also believed in the capacity of the Chinese ‘human heart’ to become civilized and the capacity of China to become a member of international society and recognize the universality of international law.

JHIL: In your opinion, did Martin ‘include the “otherness” of non-European countries in the ius publicum universale’ or was he actually trying to subjugate this ‘otherness’? Did he deceive the Chinese about their alleged ‘code of proto-international law’ (p. 274) in order to facilitate the adoption of Western international law?

MAC: Martin had every good intention when he tried to include the Chinese otherness into the international law system, but his ultimate objective was to have the Chinese recognize the highest standard of God’s justice as reflected in international law, as well as the superiority of Christian civilization. When Martin argued for a proto-code of international law in Ancient China, he was not looking for a Chinese international law that was valid in its own terms. Instead, the proto-Chinese international law served a teleological narrative that placed modern international law and Christian civilization as the ultimate end of human progress. The fact that China had an international law before, as Martin argued, helped ultimately justify international law’s universality, confirming the timeless validity of certain concepts that were now projected into a temporality and a spatiality that transcended European confines, although being constantly subjugated to its deemed superiority. The otherness of China was not recognized and never included in an ius publicum universale. After all, to be part of it, such otherness had to be made legible through the reframing and re-conceptualization of its history and experience that used and validated European categories of international law. It dismissed everything else that did not quite fit the nineteenth-century legal concepts and historical narrative of international law. That said,
I do not think that Martin was plotting intentionally to deceive the Chinese. Again, he had every good intention, and he viewed the Chinese as capable of receiving God’s gospel and capable of international law.

**JHIL:** Do you think Martin would have been equally successful spreading the Western perception of international law if China’s main political goal had not been the reacquisition of sovereignty by opening to the West?

**MAC:** I doubt that. The 1864 memorandum from Prince Gong and the officials of the Zongli Yamen (the government body in charge of foreign policy in imperial China established after the Second Opium War in 1861) to the Emperor in response to Martin’s effort to translate Western law in 1864 is quite indicative of the fundamental disapproval that persisted among leading officials. While the translation was appreciated, the memorandum postulates: China has its laws and institutions; it is inconvenient to consult foreign books. There was significant resistance to Western knowledge, but for pragmatic reasons they had to use Western ‘barbarians’ to control and fight the other foreign barbarians (as exemplified by the famous Chinese saying *yi yidi gong yidi* 以夷狄攻夷狄), as was the case of the American lawyer Anson Burlingame, appointed by the Qing as Envoy Extraordinary and Minister Plenipotentiary to head the Chinese diplomatic mission to the United States in 1867. Martin would not have even been in China if not for the Opium Wars and the treaties that forced China to open up to trade and missionaries. He would also not have been so successful if the Qing did not need to respond to Western imperialism by creating ‘Chinese sovereignty’ and relating to other countries through the new system of international law. China as a sovereign nation was an invention of the nineteenth century; before this, ‘China’ was a term used to describe the people, land, and civilization that constituted the historical and civilizational foundation of what is ‘China’ today. If not for Western gunboat diplomacy and China’s near annihilation by Western powers and Japan at the end of the nineteenth century, the Qing would not have introduced foreign institutions and laws. But especially as the First Sino-Japanese War ended with the dramatic defeat of China in 1895, the introduction of Western institutions was no longer an option but an impelling need.

**JHIL:** What induced you to compare China’s international position in the nineteenth century to that of the so-called Warring States period? What does it tell us from a theoretical perspective that Xu Jiyu compared ‘European countries and their relations to the Warring States period’ (p. 277)?

**MAC:** The Warring States period (475–221 BC), together with the Spring and Autumn periods (771–476 BC), was part of the Eastern Zhou (770–256 BC),
when the central authority of the Zhou dynasty started to decline. In the Warring States period, the various states of Qin, Chu, Zhao, Wei, Han, Yan, and Qi declared independence from the Zhou Dynasty and started to compete for power. The choice of the Warring States period, used first by Xu Jiyu, a late Qing high-ranking official and geographer, for his analogy with the international system and later adopted by Martin in his argument of a proto-international law in ancient China, is due to the importance that period occupies in Chinese tradition. It was an initial moment of disunity and battles for hegemony among the different states that viewed themselves as independent. It was also a time when many great philosophical schools emerged, together with the governmental structure and fundamental elements of Chinese political culture. It is like Ancient Greece for Western civilization. And for Xu Jiyu and Martin, the situation of independent states resembled that of independent and equal sovereign countries all fighting for power that gave rise in the West to modern international law. I found it fascinating how Martin argued for the existence of a proto-international law in the Warring States period. His theory was successful not only in China but also abroad – to this day. Many leading Chinese jurists, such as Wang Tieya and Xue Hanqin, still talk about Chinese proto-international law in the Warring States period. More recently, the eminent international legal historian Stephen Neff has traced the origin of the first systematic writing of international law to China’s Warring States period. Even the current global histories of international law often refer to China’s Warring States proto-international law, and I found it intriguing how authors continue to project categories of the present into Chinese history. Regrettably, they don’t treat the history of China’s normative systems on their own terms. Some of the current global histories of international law continue to work on generalizations based on the belief that the West occupied the normative centre to build our general knowledge. Some take account of other non-Western histories as long as these prove or disprove Western experience. Often, this can also be understood as a form of self-orientalism on the part of the Chinese, who embraced the narrative that Ancient China had a proto-international law and promoted an extensive learning from the West that has been seen as valuable for strengthening the state internally and vis-à-vis other countries in international society. These ways of analysing history tend to reproduce Western categories without questioning them. In my article, I wanted to show how we still talk about the ancient international law of China’s Warring States period and demonstrate how a process that seems inclusive towards China actually promotes and imposes Eurocentric categories under the guise of fake universality into other experiences. China should be studied and treated in its own terms rather than be reduced to a few categories of modern international law.
JHIL: In the conclusion you state that China ‘took up Martin’s idea ... to improve and reshape international law as translated from Western languages’ (p. 298). Is this Chinese reshaping of international law a development that we can see nowadays on an even bigger scale? From domestic through regional to global so to speak?

MAC: There are continuities in what China is doing now with international law and what it tried to do in the past. The major difference is that today China is a great power, not far from overtaking the United States as the world’s largest economy. Today’s China is also an authoritarian system with a civilization and history that, while not quite as different as the Qing empire was from Western countries in the nineteenth century, still behaves according to a distinctive logic that has diverted from Western liberal teleology. There are many debates about China being a status quo power or a revisionist power. So far, China has been a bit of both. I believe that claims that China is promoting a completely different authoritarian international system that will challenge international law are unwarranted, as China has joined most of the legal layers that form the current international order. That said, China has also become much more vociferous and transformed the meaning of international law from within, as in the case of human rights. China has signed all major human rights conventions and has published white papers on the topic since 1991. However, China views itself as following a ‘unique path’ of human rights and has argued that there is no universal road for developing human rights in the world. For China, each country should promote human rights based on its own people’s national conditions and needs. Beijing has also understood the right to develop as more fundamental than civil and political liberties. This led to the launch of the Belt and Road Initiative in 2013, to the creation of two China International Commercial Courts in 2018, and the creation of new financial institutions such as the Asian Infrastructure Investment Bank (AIIB), which, in the long run, might be an alternative to the Western-led ones. However, they follow much the same pattern. For instance, the much-debated China-led AIIB, which was accused of departing from existing multilateral institutions, is in reality modelled on them; its charter was written by an American lawyer who previously worked for the World Bank. While concerns about China’s challenge to international law are not wholly unwarranted, the most visible transformation of the international order is the shift of power from the West to the East – not China completely upending international law. Despite the power shift, many of the existing legal structures have been preserved, but their meaning might continue to change in favour of China.

JHIL: Maria Adele, thank you so much for this insightful interview!