

The End of Extraterritoriality

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1 Introduction

The application of extraterritoriality, once a simple guarantor of the rights of small communities of European merchants in the Ottoman Empire began to embody in the nineteenth century a normative hierarchy between the “Civilised” West, and yet-to-be-civilised “East.” Following the forcible “opening” of China (1842), Japan (1853), and Siam (1855), Asian states signed duplicate capitulatory treaties with Western states, granting them tariff control, territorial concessions, tax exemptions, and extraterritorial privileges. Implemented as a transitional measure, extraterritoriality protected the Western nationals from the “barbarity” of local laws until a time in which a new legal system could be implemented upon Western lines.¹

This had profound implications for a state’s international bearing, with states subject to such treaties, with Western jurists deeming them as uncivilised or “semi-civilised.” States subject to these capitulatory impositions thus existed in a form of purgatory outside of Western “international society,” compromising their sovereign equality with Western states until having been deemed to harmonise their legal and diplomatic norms with those of the West.² Nationalist movements within states subject to the capitulations increasingly agitated against what they deemed to be “unequal treaties,” seeing them as compromising their sovereignty and equality with Western states.³

By the end of the First World War, the connection between extraterritoriality and exclusion from Western international society was becoming increas-

1 This argument is best typified in Gong’s work but can be found in other similar works Gerrit W. Gong, *The Standard of “Civilization” in International Society* (New York: Clarendon Press, 1984); Brett Bowden, *The Empire of Civilization: The Evolution of an Imperial Idea* (Chicago: University of Chicago Press, 2009).

2 Also called the “expansion thesis”: *The Expansion of International Society*, eds. Hedley Bull and Adam Watson (Oxford: Oxford University Press, 1985); Bowden, *The Empire of Civilization*; Gong, *The Standard of “Civilization.”*

3 Chiang Kai Shek proclaimed that China had secured its freedom and equality among nations through the end of America’s capitulations: telegram from Chiang Kai Shek to President Roosevelt, 13 October 1942, FO 115/3514, TNA.

ingly tenuous. By 1919, many states that were subject to unequal treaties with the West had become active and recognised members of the modern system of international organisations, becoming prominent members of the newly founded League of Nations and its ancillary institutions. The League introduced a common set of rules, procedures, and institutions that all its participants could be considered to be operating within the norms and protocols of Western international society.⁴

Furthermore, these international bodies provided a platform through which states subject to extraterritoriality could voice their indignities and push for its abrogation. Nonetheless, as non-Western states took their seats in Geneva as nominal equals to their Western counterparts, they quickly learnt that the League of Nations was no panacea and that their capitulatory arrangements would remain, often for years, and, in the case of China, decades. The relationship between the continuation of extraterritoriality and the exclusion from international society has thus been questioned by some historians, who see non-European states as active participants within international society, certainly by the twentieth century, but often unequal participants within it.⁵

Extraterritoriality persisted despite the participation of non-Western states in international society, yet the Interwar era (1919–1939) witnessed the effective end of extraterritorial justice. Why Western powers decided to renounce their capitulatory privileges remains an important debate. Under the system laid out by the Western treaty regime, states subject to capitulations would need to prove sufficient harmonisation in legal norms before being deemed “ready” to subject foreigners to local laws. In the English school’s “civilisational” approach, legal reform was often complimented by significant societal changes and attempts to replicate the standards set by the West. However, as the West’s standards evolved in parallel, it meant that non-Western states were in a state of perpetual catch-up with the West.⁶

The political calculations of Western states also played a considerable role in the decision to abrogate their capitulatory regimes. Japan, the first state to abrogate its “unequal” treaties in the 1890s, did so in a period of early imperial expansion against China and Korea, making it seem increasingly difficult to enforce unequal treaties there, whilst also opening Japan up as a useful part-

4 Bull and Watson, *The Expansion*, 1.

5 Edward Keene, “The Standard of ‘Civilisation,’ the Expansion Thesis and the 19th-Century International Social Space,” *Millennium* 42, n° 3 (June 2014): 651–673.

6 Turan Kayaoğlu, “Westphalian Eurocentrism in International Relations Theory,” *International Studies Review* 12, n° 2 (2010): 196.

ner in the Pacific, as later embodied in the 1902 Anglo-Japanese alliance. But Japan had equally rapidly adopted Western legal and to some extent, societal norms, in the years prior to the renunciation of extraterritoriality. By 1919, Japan had forged a path for other states to follow suit, whilst simultaneously joining the West in imposing its own capitulatory treaties on its neighbours.⁷

In the wake of the First World War, despite the global membership of the League of Nations, there was no multilateral moment, no conference or resolution that ended the capitulatory system. Instead, the extraterritorial treaty system was removed one by one, either through unilateral negotiations with a powerful Western state such as Britain or the United States, or through wider forums and conferences where the supplicant state appeared alone, in front of many Western nations, asking to equalise their relationship. Nonetheless, the capitulatory system would largely come to an end through the Interwar period, yet the practice's seemingly abrupt end hides the political nature of its demise, and how in some cases it evolved. An examination of these negotiations reveals significant inferences on what motivated the end of extraterritorial treaty rights, illuminating how international norms develop, morph, or go extinct.

2 Unrequited Expectations: The First World War and the League of Nations

Many Asian states subject to extraterritorial capitulatory treaties participated on the Allied side in the First World War, with China and Siam entering the conflict in a limited capacity in 1917. Others, such as Persia, attempted to remain neutral, but came under British occupation, whilst Egypt, nominally an Ottoman province, had been under indirect British rule since 1882. The Ottoman Empire unilaterally severed its capitulatory treaties with all powers including its future German and Austrian allies on 1 October 1914. This prompted a unanimous protest from both the Allies and Central Powers despite being at war.⁸

By the end of the conflict, neither participation with, nor fighting against the Allies would play a role in the nullification of extraterritoriality. China, Persia, and Siam would participate in the Paris Peace Conference and become

7 Shogo Suzuki, *Civilization and Empire: China and Japan's Encounter with European International Society* (London: Routledge, 2009), 180.

8 Ambassador Morgenthau to the Secretary of State, 10 September 1914, File n^o 711.673/34, *Papers relating the foreign relations of the United States, 1914*, ed. Joseph V. Fuller (Washington: United States Government Printing Office, 1922), doc. 1838.

founding member-states of the League of Nations, where they aimed to renegotiate their unequal treaties. The Siamese Delegation met U.S. President Wilson at the Peace Conference in 1919, who stated that treaty revisions on extraterritoriality would be carried out multilaterally at the League, which the United States would ultimately fail to join.⁹ However, no such assurances were made by the European delegations. Perhaps the only multilateral gain for Asian states at the Peace Conference was the abolition of extraterritoriality for German and Austrian nationals, symbolically breaching the notion that Europeans could not be subject to local laws.¹⁰

Accession to the League was often held as a badge of modernity, and entry into Western international society as sovereign equals. Moreover, the League offered a significant multilateral platform through which to challenge unequal treaties. However, Asian states showed a lack of solidarity and did not negotiate as a bloc against extraterritoriality. Japan, now one of the “Great Powers,” did not want to relinquish its extraterritorial rights in China, whilst Chinese nationalists claimed that the decision of the Peace Conference to grant the former German concession of Shandong to Japan was motivated by a desire for Japan to participate at the League.¹¹ Siam often pursued a less confrontational approach, abstaining from voting on Japan’s proposal for racial equality, whilst it had no formal recognition of China, having abandoned the Chinese tributary system in the nineteenth century.¹² Conversely, the Chinese delegation, as it worked to revise the capitulations, did so with the expectation that it was one of the Great powers and above small states like Siam, and deserved a seat on the Council of the League.¹³ The “Great Powers” however, were more likely to close ranks. Whilst the U.S. ultimately agreed to an end of extraterritoriality with Siam in 1920, which was vigorously resisted by Britain and France, all the Powers collaborated to maintain their treaty rights in China.¹⁴

The League provided a useful political tool for the “Big Four” – Britain, the U.S., France and Italy – and were able to effectively rebuff Chinese demands to redress their unequal treaties, stating that the decision should be made multi-

9 Stefan Hell, *Siam and the League of Nations: Modernisation, Sovereignty and Multilateral Diplomacy, 1920–1940* (Bangkok: River Books, 2010), 37.

10 Wesley R. Fishel, *The End of Extraterritoriality in China* (Berkeley, Los Angeles: University of California Press, 1952), 199. Although in many cases, Allied states offered German and Austrian citizens to come under their jurisdiction in countries subject to extraterritoriality.

11 Hung Ti Chu, “China and the League of Nations,” 1937, UNOG Library.

12 Hell, *Siam and the League of Nations*, 45.

13 Alison Adcock Kaufman, “In Pursuit of Equality and Respect: China’s Diplomacy and the League of Nations,” *Modern China* 40, n° 6 (2014): 630.

14 Hell, *Siam and the League of Nations*, 37.

laterally at the League.¹⁵ However, the U.S. Senate's ultimate decision not to join the League made it a less effective venue to secure the abolition of the capitulations. Instead, negotiations would have to be carried outside of the League. The 1921 Washington Naval Conference, called by the United States, was arranged primarily to disarm, and reduce the size of navies that had blossomed in size during the War. Nonetheless, an often-overlooked part of the Conference was held on the status of China, and the continuation of capitulatory and extraterritorial treaties which continued to benefit a growing population of Western residents in different concessionary territories in China. Riddled with warlordism and managed by a weak state, the Republic of China had little political weight in these talks. Unconvinced by China's repeated demands, the question was deferred to a group of Western experts that would examine whether China was suitably prepared to dissolve its capitulatory regime and whether Chinese law was sufficiently developed to try Westerners.¹⁶

3 Egypt and Turkey and the Lausanne Conference

Whilst China, Siam and Persia attempted to use their newfound international gravitas at the League to appeal to the West to revise their treaties, civil unrest in Egypt and the rise of militant Turkish nationalism were challenging European capitulatory treaties. British officials feared that Egyptians were being inspired by the actions of Mustafa Kemal's Turkish Republican troops, who defied the Treaty of Sèvres, whilst their military success threatened Allied-occupied Constantinople. The results of the "Chanak" crisis revealed the lack of unity among the Allies, who resorted to negotiation rather than enforcing the Sèvres Treaty militarily. The Conference for the eventual recognition of Turkish statehood began in November 1922 at Lausanne in Switzerland, with the future of extraterritorial rights being one of the most contentious issues.

Turkey rejected the claim that it should be subject to the same capitulations that its Ottoman forebear had abrogated in 1914, which had been reimposed after the War in the Treaty of Sèvres. At Lausanne, Turkish negotiators insisted that the capitulations both symbolically infringed on Turkish sovereignty, but also absolved foreign residents from paying taxes, hampering the

15 Yongjin Zhang, "China's Entry into International Society: Beyond the Standard of 'Civilization'," *Review of International Studies* 17, n° 1 (January 1991): 13 (<https://doi.org/10.1017/S026021050011229X>).

16 Frank B. Kellogg, "Resolutions regarding extraterritoriality in China, adopted by the Washington Conference on the limitation of armament at the fourth plenary session," 10 December 1921, R1248/17/48718, League of Nations Archive.

nation's finances. Among the Allies, it was the British through their representative, Lord Curzon, that dominated much of the conference, and were not prepared to abandon extraterritoriality without special protections. Allied negotiators feared subjecting their nationals to continued Islamic legal practice, as well as Turkish judges they deemed untrained in Western methods, stating that "confidence is a thing which cannot be imposed, but must be inspired."¹⁷

To alleviate these fears, the Allies suggested that the inaugurated Permanent Court of International Justice in The Hague to appoint Turkish judges overseeing cases involving foreign nationals.¹⁸ This was a clear infringement on Turkish sovereignty and was rejected. Yet Allied negotiators would not back down until the Turkish negotiators conceded some guarantees for their citizens. So fraught were the negotiations that the Lausanne talks were called off in February 1923, with Curzon departing Lausanne the same day. To resolve the impasse, negotiators needed to find a way of "substituting" the capitulations in favour of an "other scheme consistent with Turkish independent sovereignty whilst guaranteeing necessary protection for foreigners."¹⁹ The attempted compromise was the abrogation of the capitulations in favour of Mixed Arbitral Tribunals, consisting of both foreign and Turkish justices where adjudicating cases involving citizens of Allied states. These courts, which were already in operation in defeated Austria and Germany, somewhat blunted the civilisational element of extraterritorial justice, whilst somewhat alleviating Western fears over the competency of the Turkish judiciary. Nonetheless, the Turks refused the use Mixed Arbitral Tribunals, seeing them as an imposition on their sovereignty, with the West settling for assurances that Turkey would modernise its legal system.²⁰

Mixed tribunals were an evolution of the extraterritorial system of consular courts, featuring a judge of the defendant's nationality on the panel.²¹ Mixed courts, already had a long history within China, as well as the autonomous Ottoman province of Egypt, which operated mixed courts for civil suits, but retained consular courts for most criminal cases involving foreigners. These mixed courts had come around from negotiations between the Egyptian mon-

17 Commission on the Regime of Foreigners. Draft Minutes of the Second Meeting, 28 December 1922, RG 43, A1 115, Box 1, NARA.

18 Ibid.

19 British Delegation, Telegram to Sir Eyre Crowe, 3 December 1922, FO 839/36, TNA.

20 Zülâl Muslu, "The Mixed Arbitral Tribunals and Turkey: Negotiating the International Identity of the Young Republic Under the Sèvres Syndrome," in *The Mixed Arbitral Tribunals, 1919–1939*, eds. Hélène Ruiz Fabri and Michel Erpelding (Baden-Baden: Nomos, 2023).

21 Ibid., 45.

archy and the foreign powers. With the outbreak of the War, Britain formally placed Egypt under a Protectorate and aimed to either replace consular courts with a more centralised system of Mixed Courts or do away with the courts altogether in an anglicised system of national courts in a similar fashion to how law operated within Britain's colonies.²²

The case was relatively unique in which a colonial suzerain attempted to centralise extraterritorial powers within its protectorate and was met with a backlash from the capitulatory powers. The mixed courts and consular system had been popular with other powers, who saw it as protection of their rights against British domination in Egypt.²³ From the outset, there was resistance to the move, particularly among some in the U.S. who saw this as injecting a "virus" on American public opinion, and an "emasculatation" of American rights.²⁴ Furthermore, renouncing Consular courts threatened retaliation by France in its Moroccan Protectorate.²⁵ These plans were put on the backfoot, when Britain's control of Egypt began to slip following a civil uprising against British rule led by the nationalist "Wafd" Party. Following two years of widespread resistance to the British Protectorate, Britain declared Egypt to be an independent state in 1921, albeit one subject to controls on its international personality and defence pending an alliance with Britain.

No longer the official governing power, judicial reform and ending the capitulations was now an aim of the Egyptian Government rather than the British. The primary power it had to convince was Britain, and negotiations about reforming the judicial system were connected to a larger array of demands before Britain relinquished its stranglehold on Egypt's foreign policy. The Wafd Party had always placed a premium on foreign support for the cause of full Egyptian independence, and pursuing the abrogation of the capitulations risked losing international support. Under the more "moderate" Premiership of Sarwat Pasha, the Egyptian Government attempted to repeal Consular courts in 1927, to little avail.²⁶ Only following a breakthrough in talks following

22 The Ambassador in Great Britain (Davis) to the Secretary of State, 19 July 1920, *Papers Relating to the Foreign Relations of the United States*, ed. Joseph V. Fuller, vol. 2, 1920 (Washington: United States Government Printing Office, 1943), doc. 185; Nathan J. Brown, "The Precarious Life and Slow Death of the Mixed Courts of Egypt," *International Journal of Middle East Studies* 25, n° 1 (February 1993): 40–41.

23 Michel Erpelding, "Mixed Courts of Egypt," in *Max Planck Encyclopedia of International Procedural Law*, ed. Hélène Ruiz Fabri (Oxford: Oxford University Press, 2020), <https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2711.013.2711/law-mpeipro-e2711>.

24 Pierre to Baldwin, 17 November 1917, FO 141/620/8, TNA; Letter to Joseph E. Ransdell, 30 November 1917, FO 141/620/8, TNA.

25 Telegram from Lord Derby to Lord Curzon, 13 May 1919, FO 608/212, TNA.

26 Jasper Yeates Brinton, *The Mixed Courts of Egypt* (New Haven: Yale University Press, 1930), 343–346.

the Italian invasion of Abyssinia in 1935 did talks lead to the 1936 Anglo-Egyptian Treaty, which was soon followed by Egypt's accession to the League of Nations, and the abolition of its capitulations at Montreux in 1937.²⁷ The transition period of 12 years was long, but with Britain supporting Egypt, other Western powers offered no resistance, and the Mixed Courts of Egypt closed their doors in 1949.²⁸

4 The Different Approaches of Siam and Persia

The Turkish nationalist movement had shaken the global system of extraterritoriality by aggressively challenging the West and negotiating from a position of strength. By the end of the 1920s, Siam and Persia would have both secured an end to their capitulatory treaties. The U.S. revision of its treaty regime with Siam became a useful negotiating chip to bring to the British and French who were reluctant to protect their larger number of subjects and their more extensive investments in Siam. However, even the U.S. apparent abrogation had conditions, with a five-year system of evocation in which U.S. defendants could continue to be tried in consular courts, whilst the U.S. refused to abandon its low tariffs until other European states had also agreed.²⁹

Whilst the Chinese delegation had used their position at the League to push for treaty revision, the Siamese used their multilateral platform more indirectly. Siamese delegates argued that the League's efforts to quash the trade in opium and human trafficking were hampered by the continuation of the unequal treaties, which they also argued were anathema to the League's ideal of the sovereign equality of its member states. The meagre 3% tariff on foreign goods imposed by these treaties meant the Siamese state was dependent on revenues from opium, whilst extraterritoriality made it difficult to enforce new laws to curb human and drug trafficking by foreigners.³⁰

Siam and Persia had very different negotiating positions towards abrogating their unequal treaties. Having secured the end of U.S. capitulations, Siam employed American legal advisor Francis B. Sayre to launch a charm offensive

27 "An Anomaly among Anomalies": *Colonial Membership of the League of Nations*, ed. Thomas Gidney (Geneva: Graduate Institute of International and Development Studies, 2021).

28 Brown, "The Precarious Life," 48.

29 Francis Bowes Sayre, "The Passing of Extraterritoriality in Siam," *American Journal of International Law* 22, n° 1 (January 1928): 81–82.

30 Hell, *Siam and the League of Nations*, 93–99.

around Europe in 1925 to convince European leaders to revise their treaties.³¹ Britain feared that abrogating its rights in Siam would set a precedent at the upcoming commission on extraterritoriality with China, but relented, marking a turning point as the biggest European power operating in Siam.³² By 1926, Siam had abrogated most of its extraterritorial treaties along a similar line to those drafted in the 1920 Treaty with the U.S. Persia followed suit, buoyed by the example of Turkey, and resistant to Japan's request to extend extraterritoriality into Persia, Persia declared that it would unilaterally end the capitulations the following year. This came on the heels of significant developments to Persia's legal code, and the domestically controversial phasing out of Sharia courts. With the collapse of the Russian Empire, Britain held the most significant interests in Persia, and wanted to protect the interests of its subjects operating in the petroleum industry.³³ The French were insistent on appointing foreign judges to Persian courts, threatening to raise Persia's unilateral repeal of extraterritoriality at the League, whilst Britain proposed introducing foreign advisors to tutor the Persian judiciary, a move that was roundly rejected by the Persian Government.³⁴ Nonetheless, the British were keen to keep the modernising Persian monarch Reza Shah as a viable partner, and acquiesced to the demand "without regard to the probable imperfection of Persian judiciary reforms."³⁵

The race of colonial subjects soon became a bargaining chip in negotiations over extraterritoriality. Britain's response to Persia's unilateral abrogation was to see if the repeal of extraterritoriality could potentially be limited to its Indian subjects.³⁶ This, ultimately, was not accepted. The separation of legal standards among Asian and European subjects had also been used in Siam by France and Britain in 1907 and 1909. Whilst discriminatory, the Siamese themselves sought greater jurisdiction over the growing number of Burmese and

31 Sayre, "The Passing of Extraterritoriality in Siam," 85–87; Gong, *The Standard of "Civilization,"* 236.

32 Hell, *Siam and the League of Nations*, 95.

33 Michael Zirinsky, "Riza Shah's Abrogation of Capitulations, 1927–1928," in *The Making of Modern Iran: State and Society Under Riza Shah, 1921–1941*, ed. Stephanie Cronin (London: Routledge, 2003), 84–102.

34 Sir R. Clive to Sir Austen Chamberlain, 30 July 1927, CO 732/27/6, TNA; Zirinsky, "Riza Shah's Abrogation," 95–96.

35 The Minister in Persia (Philip) to the Secretary of State, 17 January 1928, *Papers Relating to the Foreign Relations of the United States*, ed. Joseph V. Fuller, vol. 3, 1928 (Washington: United States Government Printing Office, 1943), doc. 575.

36 Sir R. Clive, Decypher from Persia, 22 October 1927, CO 732/27/6, TNA.

Indochinese migrants who had previously been exempt from Siamese law, rather than the smaller number of European residents.³⁷ The ebb of extraterritoriality was thus initially marked more by whom it was applied to rather than its abolition.

5 China: The Long Path to Abrogation

As Turkey and Siam successfully negotiated the repeal of their “unequal treaties,” an increasingly anarchic China struggled to convince the Western powers to revise the capitulations. Chinese delegates had attempted to invoke Article 19 of the League of Nations on the revision of treaties deemed either inapplicable or a threat to the “peace of the world,” yet the League’s Tenth Assembly deemed that the League could only advise on the revision of such treaties.³⁸ The Commission appointed in Washington to judge China’s “readiness” to repeal extraterritoriality postponed its investigation for four years due to the growing political instability in China which culminated in the murder and kidnapping of foreign nationals following a train jacking by a Chinese warlord.³⁹ Perhaps the only diplomatic victory to date for China had been the USSR’s formal renunciation of its capitulatory rights in 1924, a point that many Chinese diplomats used to pressure the foreign powers.⁴⁰ When they finally convened in Beijing in 1926, the instability in China meant that the Commission was initially confined to the beleaguered capital.⁴¹ Despite these setbacks, the report was congenial towards China’s bid to remove extraterritoriality, acknowledging the upsurge in nationalist sentiment and the desire to

37 Francis Bowes Sayre, “The Passing of Extraterritoriality in Siam,” *American Journal of International Law* 22, n° 1 (January 1928): 73–80.

38 Hung Ti Chu, “China and the League of Nations,” 7.

39 The Minister in China (Schurman) to the Secretary of State, 13 September 1923, *Papers Relating to the Foreign Relations of the United States*, ed. Joseph V. Fuller, vol. 1, 1923 (Washington: United States Government Printing Office, 1938), doc. 568; this was called the Lincheng incident, Bruce A. Elleman, “The End of Extraterritoriality in China: The Case of the Soviet Union, 1917–1960,” *Republican China* 21, n° 2 (1995): 69–70.

40 Many Soviet citizens continued to claim diplomatic immunity following the end of Soviet extraterritoriality in China: Elleman, “The End of Extraterritoriality.”

41 The American Commissioner on Extraterritorial Jurisdiction in China (Strawn) to the Secretary of State, 16 April 1926, *Papers Relating to the Foreign Relations of the United States*, ed. Joseph V. Fuller, vol. 1, 1926 (Washington: United States Government Printing Office, 1941), doc. 751.

regain full sovereignty. Yet they could not recommend the immediate abrogation of extraterritoriality.⁴²

The report acknowledged the reform of China's legal code and court system which had begun under the Qing dynasty and was continued under the Chinese Republic, yet the report was concerned more about China's tumultuous political situation.⁴³ Furthermore, the Commission believed that the military acted with impunity, and had during the process of the Commission arbitrarily executed a High Court judge and several notable newspaper editors in Beijing alone. The Commission concluded that until the rights of foreigners could be guaranteed by an extension of the modernised court systems already implemented in major urban areas, and could guarantee the security of foreigners from the arbitrary actions of the army, only then could extraterritoriality be repealed.⁴⁴

The U.S. Secretary of State, Frank B. Kellogg reiterated the U.S. commitment to abrogating the capitulations in the future.⁴⁵ The inexorable global decline of extraterritoriality in the 1920s had left China behind, much to the anger of its new nationalist government. The Commission on Extraterritoriality had operated in Beijing, the Capital of the internationally recognised Beiyang Government, but in the months following its publication, it was beset by its rival government in Nanjing led by General Chiang Kai Shek. The "Northern Expedition," led by the nationalist Kuomintang sought to reunify China, ending the Beiyang Government and the warlordism that dominated northern China. By December 1928, China had been nominally reunified under the Kuomintang, with Chiang Kai Shek at the Government's head, although China remained riddled with factionalism.

International recognition passed swiftly to the new Government in Nanjing, with promising signals from the Western powers to negotiate an end to the capitulations. A new treaty with the United States in 1929 would render China back its tariff autonomy, which had been removed in 1903 following the Boxer Rebellion.⁴⁶ Throughout 1929, secondary European powers such as Belgium, Italy, Denmark, Portugal and Spain all concluded new agreements with

42 Report of the Commission on Extraterritoriality in China, 16 September 1926, Hathi Trust, [https://hdl.handle.net/2027/uc1.\\$b47432?urlappend=%3Bseq=124](https://hdl.handle.net/2027/uc1.$b47432?urlappend=%3Bseq=124).

43 Kayaoğlu, "Westphalian Eurocentrism," 163–164.

44 Report of the Commission on Extraterritoriality in China, 16 September 1926, Hathi Trust.

45 Alma Blabon et al. versus the United States (United States Court of Claims, 3 June 1959), RG 59/A1 5387, NARA.

46 Harold S. Quigley, "Recognition of Nationalist China by the United States," *Current History* (1916–1940) 28, n° 6 (1928): 1060–1064.

China to end their extraterritorial rights, but only on the condition that the Great Powers that had commissioned the Washington Conference report on extraterritoriality also signed. This marked a continuation of the policy of the previous Beiyang Government, which had sought to “divide and conquer” the Western powers following the publication of the 1926 report on extraterritoriality by pursuing the removal of the capitulations of the weakest Western powers.⁴⁷ However, Britain, France, Japan, and the United States, pushed back against the Kuomintang’s demands, acknowledging their aspirations to the end of extraterritoriality, but stating that despite the declaration of China’s unification, large parts of China continued to evade the rule of the central government.

Not dissimilar to the conclusions of the 1926 Report, the Western powers stated that they remained more concerned with China’s political situation rather than the state of China’s laws. On 30 December 1929, the Nationalist Government declared that 1930 would be the year that China would reclaim its sovereignty and that the process of unilaterally abolishing extraterritoriality would commence on 1 January.⁴⁸ The unilateral action against the capitulatory powers backfired. Whereas the Beiyang Government’s “salami tactics” of picking off the weaker European powers had seen relative success, the unilateral declaration pushed the Great Powers into greater cooperation.⁴⁹

The United States and Britain, the main negotiating powers, resisted ending their extraterritorial privileges but also prepared an organised retreat. The British negotiator, Miles Lampson, was ordered to retain criminal extraterritoriality, sacrificing civil cases. Moreover, negotiations centred on surrendering certain jurisdictions, with the British ready to release Canton, Hankow, and Tientsin, rather than releasing the most significant international settlement at Shanghai.⁵⁰ These settlements combined represented 90% of the Western citizens living in China, but Shanghai’s International Settlement was the most significant. The U.S. negotiating position intended to place safeguards in the draft treaty that would absolve Shanghai and Tientsin from the abrogation of extraterritoriality for a decade, a decision that the British resisted.⁵¹

The instability in China became a particularly difficult negotiating point. The Western Powers argued that they could not abandon consular justice if

47 Fishel, *The End of Extraterritoriality*, 129.

48 Quincy Wright, “The End of Extraterritoriality in China,” *The American Journal of International Law* 37, n° 2 (1943): 286–289.

49 Fishel, *The End of Extraterritoriality*, 165, 170.

50 Substance of Instructions Sent to Miles Lampson, 7 March 1931, FO 115/3397/239/1, TNA.

51 Fishel, *The End of Extraterritoriality*, 183; Foreign Office, Memorandum F5330/34/10, 5 October 1931, FO 115/3397/239/1, TNA.

there were no guarantees that China's new legal codes could be enforced. This issue was compounded by the fragility of the new Nationalist Government, with the Powers reluctant to surrender their privileges to a regime that could potentially fold at any moment. Conversely, the Kuomintang had staked a considerable amount of political capital on restoring China's sovereignty by abolishing the capitulations before the Party Conference in May 1931.⁵² This coincided with the rapid introduction of five new modern legal codes that were implemented between 1928 and 1931.⁵³ Attempts to negotiate the Chinese ultimatum were thus fraught and culminated in an extension of the deadline to early 1931 to submit a revision of the existing treaties.

Western concerns about the new Nationalist Government's stability were vindicated when a faction of the Kuomintang in Guangzhou challenged Chiang's new provisional constitution, leading to a breakaway rump state. The lead negotiator for the Chinese in Washington DC, Dr Wu, resigned, aligning himself with the Guangzhou regime.⁵⁴ British and American negotiators, now working increasingly in tandem, continued to stall negotiations throughout the summer of 1931. However, the Japanese invasion of Manchuria following the Mukden incident in September put a halt to negotiations over extraterritoriality. By the end of the year, the Chinese Government also accepted that talks over the future of extraterritoriality would be temporarily suspended.⁵⁵

China's war with Japan effectively nullified negotiations with the Western powers, but the resulting conflicts itself did much to effectively end the practice of extraterritoriality. The British now openly negotiated with the United States to stop the negotiations with China, doubting whether the central government would survive the Japanese invasion.⁵⁶ Japanese Manchuria, now a puppet state of Japan called Manchukuo, extended extraterritorial rights to Westerners living within it. However, Western states' refusal to recognise Manchukuo under the U.S. "Stimson Doctrine" and the League of Nations resolution of non-recognition meant that extraterritorial rights in Manchukuo were only guaranteed for Japanese nationals, and were applied to other foreign nationals on an ad hoc basis.⁵⁷ By 1937, the Japanese had abrogated extraterritoriality in

52 Substance of Instructions Sent to Miles Lampson, 7 March 1931, FO 115/3397/239/1, TNA.

53 Kayaoğlu, "Westphalian Eurocentrism," 178.

54 Fishel, *The End of Extraterritoriality*, 184.

55 *Ibid.*, 186–187.

56 Extraterritoriality China, 28 December 1931, FO 115/3397/239/1, TNA; Cabinet 92 (31), 16 December 1931, 9, CAB 23/69/21, TNA.

57 Fishel, *The End of Extraterritoriality*, 189–190.

Manchukuo, including for its own nationals, following extensive changes to the legal system and insurance that the judiciary was sympathetic to Japan.⁵⁸

This principle of Western non-recognition of Japanese conquests, coupled with Japan's growing expansion into China throughout the 1930s led to a *de facto* termination of extraterritorial privileges across much of China. By 1935, the Japanese declared that extraterritorial privileges would be removed in Manchuria for states refusing to recognise Manchukuo, an act which they carried out in 1937, despite protestation from the United States, which continued to operate its Consular courts after the abrogation.⁵⁹ The outbreak of Japan's full scale invasion of China in 1937 was to quickly envelope major cities with large expatriate communities, with Beijing and Tientsin (Tianjin) falling to Japanese forces within a month, followed soon by Shanghai. Extraterritorial privileges were now retained not to protect foreigners from Chinese laws, but from the Japanese armed forces, with foreign powers being allowed to garrison troops in their concessions under the Boxer Protocol.⁶⁰

Japan's conquered territory in China were placed under a new Chinese puppet government in Beijing, which the foreign powers again refused to recognise. However, with the vast majority of expatriates residing in areas under Japanese occupation, Japan pressured Western states to recognise its new puppet government, in exchange for retaining their extraterritorial rights.⁶¹ This pressure intensified following the fall of France to Nazi Germany in the summer of 1940, and the Japanese occupation of French possessions in Asia.⁶² On 18 July 1940, a month following France's defeat, the new British Prime Minister, Winston Churchill, raised the issue of extraterritoriality in Parliament, declaring Britain's intention to relinquish its extraterritorial privileges in China following an end to the War.⁶³ This was seconded the day after by U.S. Secretary of State Sumner Welles.⁶⁴

The accelerating significance of abolishing the privileges during the conflict, contrary to policy since 1931, had been twofold. In March 1940, Japan established yet another Chinese puppet state, this time for territories conquered in the Chinese heartland, led by an ex-Chinese nationalist, Wang Jing-

58 Thomas David DuBois, "Inauthentic Sovereignty: Law and Legal Institutions in Manchukuo," *The Journal of Asian Studies* 69, n° 3 (August 2010): 764.

59 Fishel, *The End of Extraterritoriality*, 191.

60 Watt, *How War Came: The Immediate Origins of the Second World War, 1938-1939*, 356-59. *Ibid.*, 196-197.

61 *Ibid.*, 203-205.

62 *Ibid.*, 205-206.

63 Transit of War Material to China (Hansard, 18 July 1940), cc399-401.

64 Fishel, *The End of Extraterritoriality*, 207.

wei from occupied Nanking. The use of Asian puppet governments played into Japanese propaganda that it was constructing an “East-Asian Co-Prosperity Sphere” under the slogan “Asia for the Asiatics.” Despite the fallacious nature of the Co-Prosperity Sphere, the continued existence of extraterritorial rights for Westerners provided useful material for Japanese propagandists that highlighted the inability and subservience of Kuomintang to the Western Allies.⁶⁵ Following Japan’s attack on Pearl Harbour as well as European colonial possessions in Asia in December 1941, most of the Western expatriate community in China came under Japanese occupation.

The entry of the U.S. and Britain into the War in Asia changed the calculus towards revising the capitulations. Initially the British Foreign Office saw a move to abolish extraterritoriality when British influence in East Asia had been effectively wiped out as a sign of weakness.⁶⁶ Yet the fact that extraterritoriality was now *de facto* extinguished and the unpopularity of attempting to reimplement it once the conflict was over eased the idea of abrogating it.⁶⁷ A decade prior, Britain and the U.S. had worked together to slow negotiations with China, now they became competitors, fearing that one would abrogate before the other.⁶⁸ Britain approached the United States in April 1942 to rekindle discussions on abrogating extraterritoriality in China but with the hope of retaining privileges in Shanghai.⁶⁹ The United States decided to coincide the announcement with the anniversary of the founding of the Republic of China on 10 October 1942. The decision to surrender extraterritorial rights was received warmly by Chiang Kai Shek, who wrote to Roosevelt, stating that China was finally “an independent and democratic nation,” which had gained “equality among the United Nations.”⁷⁰

Britain and the U.S. formally abrogated their extraterritorial rights on 11 January 1943, which was quickly mocked by Wang Jingwei’s puppet regime, claiming that it was an empty gesture, and that Japan had done more to

65 Special To The New York Times, ‘ASSERTS JAPANESE WOULD CHAIN CHINA’, *The New York Times*, 12 January 1942. Alma Blabon et al. versus the United States (United States Court of Claims, 3 June 1959), RG 59/A1 5387, NARA.

66 Viscount Halifax to All Consular Posts in the Continental United States, 9 October 1942, FO 115/3514, TNA.

67 Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China*, reprint edition (Cambridge: Cambridge University Press, 2014), 183–184.

68 Alma Blabon et al. versus the United States (United States Court of Claims, 3 June 1959), RG 59/A1 5387, NARA.

69 Fishel, *The End of Extraterritoriality*, 209.

70 Telegram from Chiang Kai Shek to President Roosevelt, 13 October 1942, FO 115/3514, TNA.

advance the abolition of extraterritoriality through attacking the West rather than negotiating with it like the Kuomintang. Nevertheless, the decision precipitated a reaction from the Axis powers, with Japan racing to sign the abrogation of its extraterritorial rights within Wang Jingwei's puppet regime two days before the Allied signing. Italy followed suit on 14 January as did Vichy France on 23 February, with both officially returning their legation areas to the Chinese puppet regime in Nanking.⁷¹ By the end of the Second World War, the remaining minor European states yet to repeal their capitulatory treaties with China did so, marking a symbolic end to the era of extraterritoriality.

6 Conclusion

The continuation of extraterritoriality in China into the 1940s marked it as a seeming exception to rapidly changing legal norms around its practice. By the late 1920s, extraterritoriality had been effectively repealed in many jurisdictions, revealing that a normative shift had taken place after the First World War, with states subject to such treaties feeling emboldened to challenge their capitulations. Western jurists and negotiators too, often admitted that they felt the system of extraterritoriality was antiquated, and yet chose to perpetuate it further.⁷²

Nonetheless, it can be difficult to disaggregate whether political factors, conformity to Western legal standards, or a paradigm shift towards capitulatory regimes were the primary cause for the rapid end of extraterritoriality. In every presented case, extraterritoriality was only repealed following the introduction of new Westernised legal codes. Only the Ottoman Empire attempted to unilaterally repudiate the capitulations without having fully reformed its legal system, and, would see the capitulations reintroduced after the First World War. Yet in the aftermath of the Great War, it was evident in the case of Turkey and Persia, both of which were able to force an end to their capitulatory treaties, that the Western powers continued to have considerable doubts about the new legal codes but accepted the demise of extraterritoriality for political expediency.

⁷¹ Fishel, *The End of Extraterritoriality*, 213–214.

⁷² Here the British Consul admitted sympathising with Persia's attempt to rectify its position as a "semi-civilised" state: Consul-General Bristow to Sir R. Clive, 26 May 1927, CO 732/27/6, TNA. This is evident in the case of Siam in Wolcott Homer Pitkins, *Siam's Case for Revision of Obsolete Treaty Obligations Admittedly Inapplicable to Present Conditions*. (New York: s.n., 1919), <http://archive.org/details/siamscaseforreivio0pitk>.

But it was China which marked the epitome of the political nature, rather than the conformity of Western legal norms, as the basis for ending extraterritoriality. The abrogation of 1943 was essentially a war measure following the *de facto* demise of extraterritoriality following Japanese occupation. From the outset of China's attempts to renegotiate its treaties in Paris in 1919, the negotiations and reflections of the Committee to assess China's "readiness" to try foreigners, rested more on the Chinese state's capacity to enforce the law within its territories, rather than the form of the legal system and the content of its laws. However, the focus on state capacity was a double edge, that being the ability of the state to negotiate with the Western powers. Each successive Chinese Government faced significant internal challenges, with the collapse of the 1928 Beiyang Government, and Japan's repeated wars with China thwarting attempts to renegotiate with the Western powers.

Regardless of its legal reforms and the state of its internal stability, China was well represented at the League of Nations, spending a considerable amount of time as a non-permanent member of the Council.⁷³ For China and other states subjected to unequal treaties, their membership was a statement of their integration into Western international society, but due to the continuation of extraterritoriality, as second-class citizens within it. The League had little direct bearing on challenging extraterritoriality multilaterally. Yet League membership challenged the "normative hierarchy" that extraterritoriality had previously inferred, provided a regular channel of diplomatic communication, and on occasion clashed with extraterritoriality when it hampered international resolutions.

Despite the League's global nature, Western states continued to closely operate when it came to guarding their capitulatory privileges. This is particularly evident in the case of Britain and the United States in China, or Britain and France in Siam. Moreover, Western states often served to check other Western states if they considered abrogating extraterritoriality, such as the resistance to Britain's attempts to end consular jurisdiction in Egypt. In this regard, extraterritoriality became a self-reinforcing practice as Western states resisted attempts to abolish it. Finally, the Interwar years did not mark an outright end of extraterritoriality but often its evolution. Extraterritorialities supposedly transitional nature often transitioned to Mixed Courts rather than seeing an outright end to extraterritoriality. Nonetheless, these cases were outliers and not representative of what had once been a global norm. Extraterritorial courts continued to linger in places such as the international zone

73 Kayaoğlu, *Legal Imperialism*, 159.

of Tangier, or the Gulf states until the 1970s, the vestiges of normative hierarchy that had once spanned the globe.⁷⁴

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74 *British Extra Territorial Jurisdiction in the Gulf 1913–1971: An Analysis of the System of British Courts in the Territories of the British Protected ... Era*, ed. H. Al Baharna (Slough: Archive Editions Ltd, 1998).

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