

# Secret Rules: The Politics and Strategy of Russian Extraterritoriality in China

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## Introduction

Why would someone living in China claim Russian citizenship when accused of a crime? In 1906, Alec Alexander did just that, seeking to be tried in a Russian court rather than a Chinese one.<sup>1</sup> Facing charges of prostitution with evidence mounting against him, he claimed Russian citizenship despite not being a Russian citizen at all. This was because in this time, a Russian living in China could be tried in a Russian court because of a special legal status called extraterritoriality. Countries such as the United States, Great Britain, and Russia held this status, which allowed their nationals residing in China to sue or be tried in the courts of their home countries rather than in Chinese courts. Typically, foreign residents in China would appear before “Mixed Courts” or local Chinese courts, but this exception created foreign courts based in China that could try their own citizens.

In early 1900s China, Western powers exerted tremendous influence over the city of Shanghai through treaty ports which divided the city into territories controlled by the West, and as a result their nationals came to Shanghai to take advantage of opportunities their countries created for them. Thus, the United States, Great Britain, and France had many citizens residing in China following the Opium Wars, and part of these countries’ control over China consisted of systems of extraterritoriality. However, many Russians came to the country as independent immigrants or even political refugees. The number of Russian migrants in China necessitated their own system of extraterritoriality. Russia’s extraterritoriality is widely considered to have

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<sup>1</sup> “The Provisional Court of Shanghai,” *China Law Review* 3, no. 6 (1927): 429.

come to an end in 1924, with Russia being the first major power to abolish their extraterritoriality with China, but the presence of secret treaties between China and Russia suggests that the system persisted for several decades afterward in one form or another. This paper examines how Russian extraterritoriality continued to influence Chinese courts, even after its official endpoint. Following court documents and secret treaties, I explore the exceptions that were made to allow Russian parties in China to remain under Russian jurisdiction.

Research on the use of extraterritoriality in China has largely focused on Western imperial powers such as Britain and the United States; *The Foreign Presence in China in the Treaty Port Era* by Robert Nield presents a thorough examination of these dynamics but largely captures them through this West-focused lens, while in *Grounds of Judgment*, Par Cassel explores the perceptions and politics that influenced extraterritoriality in Asia, presenting primarily an overview of the history of extraterritoriality. Focusing instead on Russia reveals an unusual difference in the application of this policy. Turan Kayaoglu's "The Extension of Westphalian Sovereignty" complicates the reasoning for extraterritoriality to exist and later to end by examining how each country had different reasons for using it. In "The End of Extraterritoriality," Bruce Elleman isolates Russia as a more unique case and presents this idea that extraterritoriality between Russia and China may have continued past its official end; this analysis is what prompted my research into Russia's legal relationship with its diaspora in China. This paper combines these analyses with court documents to test the idea that extraterritoriality is less an official status than a policy, intended to increase Russia's sphere of influence, whose effects continued long after 1924.

To understand to what extent extraterritoriality truly came to an end, I will first look at the historical relationship between Russia and China and how patterns of immigration created

and influenced extraterritoriality, including its imperial legacy in relation to European powers. Then, I will examine what the extraterritoriality system did for Russian nationals in China when it was in full effect and how it worked in practice, using examples from court cases prior to 1924. With a particular focus on the 1906 case of *A. Pavlow v. Baron Ward*, I will demonstrate that the spirit of extraterritoriality was fully present with the example of the British Supreme Court in Shanghai. These cases show the language used to discuss extraterritoriality, often without referring to it by name.

Then I will turn to the transitional period following 1924, in which the Soviet Union officially abolished their subjects' right to extraterritoriality and discuss how extraterritorial practices remained in effect until as late as the 1960s. To demonstrate this, I will examine another court case, this one in the Provisional Court of Shanghai: *Rizaeff Freres v. The Soviet Mercantile Fleet*, which reveals an instance in which the ideas of extraterritoriality remained in the Chinese pluralist legal system. Finally, having established that Russian extraterritoriality remained in China to some extent and identifying some of the ways it persisted, I will examine the possible political reasoning for this secret maneuvering by Russia and China. Though Russian extraterritoriality officially ended in China in 1924, continued exceptions to allow Russian defendants to remain in Russian jurisdiction and the presence of secret treaties between the two countries suggests that Russian legal influence continued to affect Chinese law for decades afterward.

## **Background**

Russian immigrants had been present in China for the past few centuries with the largest influx arriving at the start of the twentieth century. With the construction of the Chinese Eastern

Railway across Manchuria which connected with the Trans-Siberian Railway in Vladivostok, Russians began to migrate to Northern China for economic opportunities.<sup>2</sup> The city of Harbin in China was largely Russian-speaking and drew in many Russian-speakers including Tatar, Georgian, Ukrainian, Armenian, Jewish, and Polish immigrants.<sup>3</sup> After the Bolshevik Revolution in 1917, many civilians fleeing the violence left Russia for China. Then, following the Red Russians' victory in 1922, White Russians retreated to China, bringing many civilians living in the area with them. Stalin's rule in the subsequent decades pushed even more Russians to China.<sup>4</sup> As the Russian émigré community grew, chain migration and cultural connections pulled more Russians south to Harbin, and the presence of other immigrant communities pulled Russian migrants to Shanghai. This created a significant Russian population in China, and all of them could potentially find themselves in a court case involving extraterritoriality.

The conventional perception of extraterritoriality indicates that it skewed the balance of power in Chinese litigation toward the foreigners whose mother countries held extraterritoriality, allowing foreigners to “commit crimes with impunity, sometimes literally getting away with murder.”<sup>5</sup> There were well-known instances in which people accused of serious crimes were able to claim foreign citizenship in order to be tried in a court that was more favorable toward them, and these are often held up as examples for how the system favored foreigners. The treaties that first established the principle of extraterritoriality are often called the “unequal treaties,” which implies that extraterritoriality created an essential power imbalance.

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<sup>2</sup> Mara Moustafine, “Russians from China: Migrations and Identity,” *International Journal of Diversity in Organisations, Communities and Nations* 9, no. 6 (2010): 144.

<sup>3</sup> Moustafine, 144.

<sup>4</sup> Moustafine, 146.

<sup>5</sup> Par Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford: Oxford University Press, 2011), 39.

Since the Qing Dynasty, however, China had a policy of noninterference in the affairs of foreigners, leaving them to settle legal disputes between themselves.<sup>6</sup> The first known instance of legal pluralism between Russia and China was in 1743 when two Russian soldiers were accused of murdering two Chinese civilians. In this case, the Qing government consulted the Russian government to obtain their permission before executing the Russians.<sup>7</sup> Thus, to say that extraterritoriality was a purely imperialist policy is to ignore the complete history of the system; however, one can also argue that its purpose evolved to become more imperialistic. The reality for China and Russia was likely somewhere in-between; throughout the history of Russian treaties, the Russians had at times been able to exert power through extraterritoriality. Formal extraterritoriality began with the 1858 Treaty of Tientsin, which first established the rules of extraterritoriality between Britain and China during the Opium Wars, and treaties with other countries followed, codifying these practices.<sup>8</sup>

### **Extraterritoriality's Quiet Persistence**

During Russia's period of formal extraterritoriality in China, Russians involved in Chinese court cases could be tried in Russian Courts, and some people attempted to take advantage of this system. In a case before the Russian Consular Court in 1906, defendant Alec Alexander was arrested in China for alleged sex trafficking. Alexander tried to claim Russian citizenship, but he was not able to present any evidence of his citizenship, and so the Court refused to rule on the case. Following this, Alexander's case moved to the Mixed Court, and after he was found guilty there, he was deported.<sup>9</sup> In the Alexander case, he evidently tried to claim Russian citizenship

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<sup>6</sup> Cassel, 42.

<sup>7</sup> Cassel, 44.

<sup>8</sup> Tseng Yu-Hao, *Termination of Unequal Treaties in International Law: Studies in Comparative Jurisprudence and Conventional Law of Nations* (Shanghai: The Commercial Press, 1931), 272.

<sup>9</sup> "The Provisional Court of Shanghai," 429.

without actually being a Russian citizen, presumably because he felt that it would be beneficial to him, and perhaps even at the advice of his lawyer. Regardless of whether it was true in practice, this case demonstrates that people *believed* being tried outside the Chinese or Mixed Courts would help the accused.

Even in cases in China-based foreign courts, the courts still considered the citizenship of each party and considered whether it belonged in other foreign courts. In the instance of *A. Pavlow v. Baron Ward* in 1906, before the British Supreme Court in Shanghai, the plaintiff Pavlow was a Russian citizen. His lawyer was recorded as advocating for the trial to occur in a Russian court instead, while the lawyer for the defendant advocated for the case to remain in the British Supreme Court. Although the judge eventually decided to keep the case within his court, he was concerned with following the proper procedure: “He did not want it to be thought that he was assuming jurisdiction which ought properly to be exercised by the Russian Consular Court, but he felt that he was bound by the statute.”<sup>10</sup> This case also demonstrates a unique circumstance in which a Russian’s lawyer advocated for his client to be tried in a Russian court, even when the Court was not a Chinese court but another foreign court. It also shows how ideas surrounding extraterritoriality can be present in a court room without it actually applying in a legal sense.

Both these cases present the common belief that people in China with non-Chinese citizenship ought to be in the courts of their home countries, even when not in a Chinese court — and that their home countries had some say over it. They also show that the issue of extraterritoriality was not only about imperial power but about individuals wanting litigation to occur specifically within their own country’s courts, or at least *outside* the Chinese courts. At this point, extraterritoriality was firmly seen as an advantage to foreign countries, which could also

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<sup>10</sup> “The Provisional Court of Shanghai,” 414.

have made it difficult for the Chinese government's ability to maintain the rule of law in its own country. Extraterritoriality was seen as beneficial to the citizens of the state who had it, and this allowed those states to undercut the Chinese legal system. Eventually, however, Russian interests actually favored abolishing extraterritoriality, and these interests aligned with those of China.

### **The Politics of Extraterritoriality**

Our first assumption about Russia's choice to abolish extraterritoriality might be that Russia was sacrificing an important political advantage. However, there was a significant difference in the political position of Russia in contrast to the other world powers with spheres of influence in China. While a country like the United States might want to protect their citizens in China to avoid receiving backlash from their citizens' actions, most Russian expatriates in China at that time were White Russians, while the Bolsheviks held power in the Russian government. Soviet Russia was not interested in protecting the very people they had driven out of their country, and in fact, their political interests lay in undermining the White Russian émigrés' positionality as Russian nationals and their legitimacy as a group. Additionally, because of the perception that extraterritoriality benefitted the outsider states, the Soviets' choice to relinquish their extraterritoriality made them more popular with the Chinese people.<sup>11</sup> At this time, the Soviet Union was still new, so maintaining positive opinions about the Soviet Union internationally was essential to furthering their soft power. In 1919 Russia first floated ending extraterritoriality with the Karakhan Manifestos, stating the Russian government's favor toward ending the practice based on their communist values.<sup>12</sup> Between February 1921 and October 1924, China worked to dissolve Russia's extraterritoriality, which was stated as an attempt to undermine White

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<sup>11</sup> Elleman, Bruce, "The End of Extraterritoriality in China: The Case of the Soviet Union, 1917-1960," *Republican China* 21, no. 2 (1995): 67.

<sup>12</sup> Elleman, 66.

Russians.<sup>13</sup> However, even after this, extraterritoriality remained for officials and others who were actually connected to the Russian government.

Chinese court cases with parties from other countries utilized the ideas of extraterritoriality into the late 1920s and 30s. In the example of *Rizaeff Freres v. The Soviet Mercantile Fleet*, which originally appeared in the Provisional Court of Shanghai, the plaintiffs were Persian merchants operating in Shanghai, who sued a Russian merchant vessel for damages of lost goods. This case presents a fascinating issue of international law that deals with who has jurisdiction over merchant vessels. The problem before the court was whether the case fell under the jurisdiction of the Shanghai court or, as the Russian defendants argued, under Russian courts. The Mixed Court had previously ruled that *Freres v. the Soviet Mercantile Fleet* fell under Chinese jurisdiction, but in the Shanghai Provisional Court, the plaintiff's petition was dismissed on the grounds that it was not under Chinese jurisdiction. The court found in this case that the Russian vessel was under the jurisdiction of Russia rather than the local government because of the defendants' nationality. *Freres v. the Soviet Mercantile Fleet* provides a unique example of how Russia was still able to have jurisdiction over their own citizens after the end of Russian extraterritoriality in China, and Russian citizens actually benefited because the case was dismissed. If this is the case, it would support Elleman's argument that extraterritoriality between the two did not come to a *de facto* end until much later. Instead, it continued in an unofficial capacity, influencing the ways of thinking and legal reasoning of individuals, lawyers, and judges just as it had even during the time of formal extraterritoriality.

Russians agreed to officially dissolve extraterritoriality as a method of pressuring the other western powers into dissolving their own extraterritoriality, but it also made sense for the Chinese government at this time. After the 1911 Revolution in China which brought an end to

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<sup>13</sup> Elleman, 68.



the Qing Dynasty and established the Republic of China, Kayaoglu argues that the Republic attempted to establish “modern” courts. This meant that they were placing more power in the national government as opposed to the system of local magistrates that previously dominated the Chinese legal system. However, this attempt was largely unsuccessful, particularly after warlords began to take power in parts of China in the 1920s.<sup>14</sup> Western powers could continue to use their lack of a “modern” legal system as justification to maintain extraterritoriality. However, because public opinion in China led people to think that extraterritoriality was detrimental to Chinese Courts’ sovereignty, they would largely have favored the end of extraterritoriality once efforts began. After Russia published the Karakhan Manifesto, Chinese opinions on the Russia greatly improved.<sup>15</sup> Because China was pushing for decolonization at this time, removing this formalized foreign influence symbolized a step toward Chinese autonomy that Western powers were at that time unwilling to take.<sup>16</sup>

Quickly following the start of decolonization, battles for public opinion between capitalist and communist powers also began, so winning over the Chinese populace was important to international relations in many countries: “The Bolsheviks... clearly hoped to take advantage of China’s disappointment with Versailles to spread socialism to China.”<sup>17</sup> While the actual effects of this may have been negligible, the idea that Russia might be spreading socialism allowed China to begin pressuring Western nations to end their own extraterritoriality agreements. Extraterritoriality technically continued between Russia and China, but both states also benefited politically and strategically from this change.

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<sup>14</sup> Turan Kayaoglu, “The Extension of Westphalian Sovereignty: State Building and the Abolition of Extraterritoriality,” *International Studies Quarterly* 51, no. 3 (2007): 650.

<sup>15</sup> Elleman, 67.

<sup>16</sup> Kayaoglu, 665.

<sup>17</sup> Elleman, 67.

## **Conclusion**

Extraterritoriality was originally seen by the public as a way for foreigners to seek protection the protection of their home countries, giving them an advantage in court. The outcomes of some of the cases examined support this, even if it was not necessarily the intention of the policy.

Eventually, Russia ended their extraterritoriality in China because it was not beneficial to maintain. Although Russia was officially the first country to do so, elements of extraterritoriality remained in practice in courts, particularly when it came to the protection of Russian officials.

The Russian and Chinese governments were able to leverage this decision as a political tool to free China from the legal influence of Western governments as well as to potentially undermine support for White Russians in China and sway public opinion toward Russia. Because the idea of extraterritoriality largely applied implicitly, even while it was formalized, it continued to influence courts in China. This convoluted history demonstrates how the inner workings of pluralist legal systems can lead to impactful political change and how imperial-era ideas can linger after systems of governance officially change. World powers often operate behind closed doors, and methods such as those explored here can serve to extend imperial interests while remaining completely hidden from the public eye.

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