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# Non-Territorial Governance
# Mankind's Forgotten Legacy

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A Review of

Extraterritoriality: Its Rise and Its Decline,

by Shih Shun Liu, Ph.D.

New York. Columbia University Press, 1925, 235 p.

In this book, *Extraterritoriality: Its Rise and Its Decline*[1], Shih Shun Liu describes a system of governance that we have had almost everywhere on earth and thus forms an important part of mankind's legacy. Yet almost nobody seems to know about it today, less discusses it. In reference to this system someone once commented, "all this is so simple and correct that I am convinced that no one will want to know anything about this." I suppose I've already proved that comment wrong, as I have learnt more about and have come to appreciate extraterritoriality as a system of governance.

The significance of Liu's book lies in that the origins and the guiding principles behind extraterritoriality are described. It is a scholarly book, rich with references from sources in numerous languages. I'm not sure whether all of the details are entirely correct or whether some have been overruled by more recent evidence, but that matters little. Liu still has managed to bring forward a good account of the earlier existence of non-territorial governance and its guiding principles. That is sufficient to make it a remarkable book and since it's one of those hard to find books, this review is brought to you. However, Liu is not alone in referring to historical extraterritoriality, so I've included many other relevant references as well.

But what really is extraterritoriality?

## Territorial vs. Non-Territorial Governance

Liu opens the book by describing the system we have today, worldwide:

> "It is a recognized principle of modern international law that every independent and sovereign State possesses absolute and exclusive jurisdiction over all persons and things within its own territorial limits" (p. 17)

The guiding principle behind this system we can refer to as 'territoriality' or 'territorial governance'. This means that the territorially sovereign states of today claim absolute political authority within their respective fixed territories. Wherever you are in the world today, you

basically have to yield to the laws of that particular territory [1], regardless of their contents or whether you approve of them or not.

Extraterritoriality originally was a system of non-territorial governance [2]. The laws followed the person, instead of the territory. Thus, in one and the same place, people could submit to various systems of laws. Just as religious tolerance rejects uniformity of faith, this non-territorial governance rejects the uniformity of laws (and thus also uniformity of faith). After all, it remains to be explained how tolerance can be good only in one sphere of life, and not in others. Extraterritoriality, or non-territorial governance, does not stop at religious tolerance but extends it to all spheres of life.

Thus, it seems that the guiding principles behind this historical system of non-territorial governance is so distinct from the present exclusive system of territorial governance that, in fact, the two systems cannot be regarded as anything else but opposites, as anything else but mutually exclusive, as anything but principally totally different in nature. Hopefully this will be entirely clear by the end of this review.

## Non-Territorial Tolerance in Ancient Times

On the origins of non-territorial governance, Liu writes:

> "The principle of territorial sovereignty [...] was unknown in the ancient world. In fact, during a large part of what we usually term modern history, no such conception was ever entertained. In the earlier stages of human development, race or nationality rather than territory formed the basis of a community of law. An identity of religious worship seems to have been during this period a necessary condition of a common system of legal rights and obligations. The barbarian was outside the pale of religion, and therefore incapable of amenability to the same jurisdiction to which the natives were subjected. For this reason, we find that in the ancient world foreigners were either placed under a special jurisdiction or completely exempted from the local jurisdiction. In these arrangements for the safeguarding of foreign interests we find the earliest traces of extraterritoriality" (p .23) [3]

Liu provides records of this kind of extraterritoriality from ancient Egypt and Greece. In Greece, special magistrates, xenodikai, were instituted for trying cases in which foreigners were involved.

In the Roman republic as well as in the empire, there was a similar magistrate, praetor peregrinus. The peregrines, peregrine, were not true foreigners; they were free inhabitants and subjects of Rome but neither citizens nor Latins. The magistrate's competence extended to disputes between peregrines and between them and Roman citizens (below I will discuss the guiding principle for ruling cases between people of different law systems). However, "[w]ith the extension of Roman citizenship to all provinces of the Empire [...] the office of praetor peregrinus disappeared from the judicial system of Rome", Liu informs us (p. 26). Thus, it seems the possibility for the peregrines to live according to their own laws ended with the Roman citizenship.

However, the tradition of extraterritorial benefits lived on in treaties with people outside the empire. For example, "the Armenians were granted the benefit of the same laws on certain subjects as those by which the Romans were ruled; but questions of marriage, succession to

property, and personal status generally, were left to be settled either by the Armenians themselves or by a magistrate named by the emperor to administer Armenian law" (p. 27) [4].

Early examples like these seem to be particularly significant since they display recognition of and tolerance towards other people's way of living. People were allowed to follow the laws they adhered to and were judged by them.

This kind of tolerance seems largely to be missing in the purely territorial governance of today.

## Medieval Theory of the Personality of Laws

The system of non-territorial governance did not fall with Rome; instead it flourished. I quote Liu at length:

> "In the absence of any views of territorial sovereignty, there developed in medieval Europe a complete system of personal jurisdiction, which has left in its wake many interesting survivals extending to modern times, and which undoubtedly exercised an immense influence upon the development of extraterritoriality. In the days which followed the downfall of the Roman Empire, as in the days of ancient Greece and Rome, but in a much more marked degree, racial consanguinity was treated as the sole basis of amenability to law. Thus, in the same country – and even in the same city at times – the Lombards lived under Lombard law, and the Romans under Roman law. This differentiation of laws extended even to the various branches of the Germanic invaders; the Goths, the Franks, the Burgundians, each submitted to their own laws while resident in the same country. Indeed, the system was so general that in one of the tracts of the Bishop Agobard, it is said: 'It often happens that five men, each under a different law, would be found walking or sitting together.'
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> "As an example of the prevalence in medieval Europe of the theory of the personality of laws, we may cite the retention of Roman law in the old provinces of Rome. Savigny shows that in the Burgundian laws and in the Constitution of Chlotar, the validity of Roman law in cases involving Romans was fully recognized.
>
> "In the same way, the principle of the personality of laws was applied and carried out by the invaders themselves in their relation with one another. The laws of the Visigoths contain the remarkable provision that 'when foreign merchants have disputes with one another, none of our judges shall take cognizance, but they shall be decided by officers of their nation and according to their laws.' Theodoric the Great (493-525), the first of the Ostrogothic rulers, instituted special judges or courts (comtes) to decide litigations between Goths and, with the assistance of a Roman jurisconsult, to decide cases between Goths and Romans. In the first half of the eighth century, the Lombards in France were tried according to Lombard law and at least partly by judges that were Alamanns, the latter having once been Lombards and lived under Lombard law. The oldest part of Lex Ribuaria (tit.31) is found to contain a passage which ensures to the Frank, Burgundian, Alamann or any other, the benefit of his own law. In the Capitularies of Charlemange and of Louis I, recognition was given to the applicability of Roman and other foreign laws to cases involving the respective foreign subjects." (p. 27-29) [5]

The extent to which systems of non-territorial governance was in operation is truly remarkable. However, in this passage, Liu makes a rather strong claim as he stated, "racial consanguinity was treated as the sole basis of amenability to law". This cannot be entirely true, as the Alamanns (Alamannis), apparently, seceded from Lombard laws to establish Alamann laws. It rather seems like ethnicity was just one basis for how people decided what laws to live under, perhaps even the dominant, but evidently not the sole basis.

The fact that people could opt out of one system of laws to adopt anther, while still living in the same place, is what gives Liu the right to call it a system of personality of laws. The law followed the person and not the territory. I wonder how many are aware of this historical aspect of international law? I surely wasn't.

Edward Gibbon, in his tome The Decline And Fall Of The Roman Empire (ch. 38), wrote the following in reference to the 'Laws of the Barbarian' of the 5th and 6th centuries:

> "[T]he laws of the barbarians were adapted to their wants and desires, their occupations and their capacity; and they all contributed to preserve the peace, and promote the improvements, of the society for whose use they were originally established. The Merovingians, instead of imposing a uniform rule of conduct on their various subjects, permitted each people, and each family, of their empire freely to enjoy their domestic institutions; nor were the Romans excluded from the common benefits of this legal toleration."

In a footnote related to this section, Gibbon wrote that Agobard "foolishly proposes to introduce an uniformity of law as well as of faith" (emphasis added).

Indeed, it seems just as foolish to propose uniformity of law as uniformity of faith. For how come tolerance is good in one sphere of life, and not in others? Why indeed stop at religious tolerance?

## Actor Sequitur Forum Rei

One intuitive concern in relation to non-territorial systems of laws would be how cases of conflict between members of different laws are to be treated. "A system of personal laws implies rules by which a 'conflict of laws' may be appeased", as Maitland (1898) noted. What would be the guiding principle in such cases? Liu informs us:

> "It is noteworthy that under a régime of personal jurisdiction, the law applied was that of the defendant, except in cases of serious crime, in which the law of the injured party or plaintiff prevailed. A connection might be established between this rule and the principle actor sequitur forum rei, one of the basic formulae of modern [i.e. 1920's] extraterritorial jurisdiction, under which the plaintiff follows the defendant into his court." (p. 29, emphasis in original)

It turns out that the principle of actor sequitur forum rei [i.e. plaintiff follows forum of the case, that is, the law of the defender or accused, not that of the accuser] assumes a different meaning under territorial governance than under non-territorial. Today, the territory in which the conflict arises, and its exclusive laws, determines the competent court for the case. This means that the plaintiff must bring suit against the defendant in the state of his domicile, habitual residence, or principal place of business. Thus, in line with territorialism, this has become a territorial principle.

However, under non-territorial governance, the accuser follows the defendant into his court, i.e. the defendant is judged according to the laws he adheres to.

Gibbon confirms this principle (ch. 38, Laws of the Barbarian):

> "The children embraced the law of their parents, the wife that of her husband, the freedman that of his patron; and in all causes where the parties were of different nations, the plaintiff or accuser was obliged to follow the tribunal of the defendant, who may always plead a judicial presumption of right or innocence. A more ample latitude was allowed, if every citizen, in the presence of the judge, might declare the law under which he desired to live, and the national society to which he chose to belong. Such an indulgence would abolish the partial distinctions of victory: and the Roman provincials might patiently acquiesce in the hardships of their condition, since it depended on themselves to assume the privilege, if they dared to assert the character, of free and warlike barbarians." (emphasis added)

Thus, according to the old, and most likely the original meaning, the plaintiff follows the defendant into his court of choice. This 'ample latitude' of non-territorial governance seems to be both a natural and tolerant solution to conflicts. Simply imagine the opposite and this becomes evident. This would imply that other people are demanded to follow the way of living that you prefer, a demand not very tolerant and contradicting the personality of laws. [6]

Maitland (1898) provided some further concrete examples of old(-fashioned?) rules for conflict resolution under non-territorial governance and personal laws:

> "We may see, for example, that the law of the slain, not that of the slayer, fixes the amount of the wergild [i.e. fine], and that the law of the grantor prescribes the ceremonies with which land must be conveyed. We see that legitimate children take their father's, bastards their mother's law. We see also that the churches, except some which are of royal foundation, are deemed to live Roman law, and in Italy, though not in Frankland, the rule that the individual cleric lives Roman law seems to have been gradually adopted."

It is conceivable to assume that in case of a crime committed against a member of another personal law community the more severe law is to be applied. However, that would immediately imply a risk that the defendant would have to follow the plaintiff to his court, i.e. the opposite principle. It would thus in such cases imply that the law of others is imposed on you. Hence, there would be well-founded objections to that kind of system. There would at least have to be coercion involved.

However, for really serious crimes, like murder, "the law of the slain, not that of the slayer" would most likely decide. Exactly what crimes are to be regarded as serious enough to nullify the principle actor sequitur forum rei could be agreed upon or stipulated in advance (this is why those old laws are so concrete when it comes to crimes and punishment), or else should be open to arbitration. [7]

## Not Intended to Derogate State Sovereignty

The personality of laws and the principle that plaintiff follows the defendant into his court was clearly discernible in the early maritime laws of Europe. "It is said that one of the cardinal principles of the celebrated Hanseatic League was the absolute independence of its members of all foreign jurisdiction wherever they resided and traded" (Liu 1925, p. 29). This system involved for example places like Lübeck, Visby and Novgorod (in what now is Germany, Sweden and Russia, respectively). Similar systems were found in Amalfi, Naples, Ancona in what now is Italy and for Florentine's (in Italy) in London. The same system operated for the Genoese (in Italy) at Nimes (in France) and by a reciprocal agreement between Spain and the Ottoman Empire and Morocco.

In relation to this, Liu makes the important observation that facts like these are sufficient to "throw overboard the theory that extraterritoriality was in any way intended to derogate from the sovereignty of the State granting it, inasmuch as the notion of territorial sovereignty was as yet unknown when extraterritoriality took its root." (p. 32). Thus, extraterritorial right were not intended to derogate State sovereignty, since State sovereignty simply was unheard of!

Liu also provides relatively late accounts of at least partial extraterritoriality, among them the case when king Henry IV arranged for English merchants to be judged by their own laws in the Hanseatic cities, the Netherlands, in Norway, Sweden and Denmark, while Richard III later did the same for Englishmen in Italy. "The letters-patent granted by Francis II, King of France, in 1559, to the Swedish subjects trading within his territory recognized the right of the latter to be judged by their own magistrates in all differences among them, although in mixed cases of any sort they were placed under the jurisdiction of the local authorities" (p. 38).

"What is most remarkable, perhaps," Liu continues, "is the treaty of [...] 1631, between Louis XIII, Emperor of France and Molei Elqualid, Emperor of Morocco, which contains terms of absolute reciprocity, so far as extraterritorial jurisdiction was concerned, [...] a treaty of perfect equality and reciprocity between a Christian and a Mohammedan Power" (p. 39). This, Liu states "ought to go far to prove that the institution of extraterritoriality was not contrived, at the beginning at any rate, and for a long time in the modern period, to meet the special situation of a defective legal system in non-Christian Powers." (p. 39-40). In the 18th and 19th century, similar agreements involved Great Britain and Morocco, the Ottoman Empire and the Kingdom of the Two Sicilies, France and Russia, France and the United States, Sardinia and Morocco, England and Portugal, as well as further examples involving Russian, Norway and Denmark. [8]

Instead of by deficient non-European judicial systems, "[t]hese late survivals of extraterritoriality in Europe", Liu tells us, "are to be explained partly by the as yet deficient judicial systems of some of the European Powers and partly by the abiding influence of the theory of the personality of laws" (p.44-5, emphasis added). Hence, he finds the deficiency of some European judicial systems "significant, because in the decline of extraterritoriality [within Europe], the improvement of the native [European] judicial system has always been an important factor. [...] In other instances, however, the persistence of extraterritoriality [within Europe] could not be ascribed to judicial deficiency but must have been due, if anything, to the existence of deep-seated custom having its basis in the time-honored theory of the personality of laws" (p. 45).

## Not of European Imperialist Origins

We have already seen that many countries, also non-Christian countries, employed the system of non-territorial governance. Liu describes some other early accounts of this system both in the Levant and in the Far East. Extraterritoriality has often been assumed to be a product of European imperialism, but, although empires have imposed extraterritoriality on foreign states, as we shall see, this isn't the full story. Liu has already informed us that imperialism couldn't be the origin of extraterritoriality, "inasmuch as the notion of territorial sovereignty was as yet unknown when extraterritoriality took its root" (p. 32, and imperialism itself is based on the later idea of territorialism).

Indeed, Liu provides several early examples of extraterritoriality outside of Europe. He mentions two seventh century documents giving privileges to Christians in Syria and in relation to these Liu makes the following important remark:

> "It is a remarkable fact that all these Capitulations [i.e. the extraterritorial rights] are unilateral or one-sided, dispensing favors without exacting any consideration. The explanation is again to be sought in the exuberant zeal for commercial development or nowhere. The object of the Capitulations was to regulate the conditions under which Europeans were to do business in the Levant; the interests of the Mussulman, whether at sea or abroad in a Christian country, were ignored in the scramble for the benefit of European commerce at home. Thus, the element of reciprocity was conspicuously absent, but its absence, though conspicuous, ought not to betray any derogation from sovereignty on the part of the proud Saracens. The fact is that during the period under examination, the notion of exclusive sovereignty was still unborn, and it is highly improbable that much attention could have been paid to it by the negotiators on either side" (p. 56-57).

Thus, the Muslims seems to have invited foreign merchants to come and trade with them by giving them the rights to live by their own laws, i.e. unilateral extraterritoriality voluntarily granted for mutual benefit. This should perhaps insert some further doubt in those that claim that extraterritoriality originally was a European imperialist imposition on non-Europeans.

But even more clear evidence is available; there was an important religious aspect of extraterritoriality as well. Liu cites a passage in the Quran [9] and then cites another scholar explaining the meaning of that passage in the following way:

> "The Mussulman law was not made for the foreigner, since he is a non-Mussulman; it is necessary that he remain subject to his own law. The Mussulman law can neither protect him nor judge him nor punish him, since it protects, judges and punishes only Mussulmans; it is necessary that he be protected, judged and punished by his own law" (p. 57-58, footnote 3).

This system is referred to as the "dhimmi system" [10], and is utterly clear evidence that extraterritoriality wasn't imposed by European or Christian imperialists.

Liu also mentions 9th century extraterritorial rights of the Frankish merchants in Jerusalem ("Frankish" more or less meant Christian or European; see Maalouf 1983), and also how "a Mussulman was charged by the Emperor of China with the power to decide the disputes which

arose among the men of the Mohammedan religion in the ninth century" (p. 48-50). In the tenth century, an extraterritorial treaty was "entered into between the Byzantine Emperor and the Varangians or Russians", Liu tells us, and "[t]he reciprocal nature of this treaty inevitably point to the degree of tolerance with which the exemption was regarded on both sides and shows that there was a time when even in the relations of one Christian Power with another the practice of extraterritoriality was by no means such an anomaly" (p. 50-51).

As the Christian Crusaders conquered ports in the Levant, merchants from Italy were given extraterritorial rights "in the Byzantine Empire, Syria, and Cyprus [and] the rights conceded were in strict accord with the principle of actor sequitur forum rei" (p. 53-4). Liu also mentions that Amalfi, Pisa, Venice and Florence had extraterritorial rights in Egypt and Italian and Spanish in the Barbary States, also under the actor sequitur forum rei principle (p. 58-9). [11]

## Later Non-Territorial Rights in Africa and the Levant

In addition to such early instances of unilateral or bilateral extraterritorial privileges, Liu describes the many later treaties in the Levant and Africa (after AD 1453). This turns out to be a strong confirmation of the stand Liu takes in regard to the origins of the extraterritorial privileges outside Europe. He tells us, for example, that when privileges were granted to France by the Ottoman Empire in 1535, "Turkey was at the zenith of its power" and France would have been in no position to impose any claims (p. 62). Indeed, when France obtained its first privileges seven years earlier, the king of France was even "in captivity in Madrid and was in no position to ride roughshod over the Turks" (p. 62). Moreover, "immediately after the conquest of Constantinople, Sultan Mohammed II granted to the Armenians, Greeks and Jews their special jurisdiction" (p. 62-3). Liu states that the "influence of religious differences [...] can, of course, hardly be denied. But what these differences did was not to furnish the Franks with ground for demanding special concessions, but rather to give the sultans an additional impetus to make their concessions" (p.63). [12]

On this 1535 treaty, Creasy (1961, p. 207-8) writes:

> "Whatever the political economists of the present time may think of the legislation of Solyman Kanouni as to wages, manufactures, and retail trade, their highest praises are due to the enlightened liberality with which the foreign merchant was welcomed in his empire. The earliest of the contracts, called capitulations, which guarantee to the foreign merchant in Turkey full protection for person and property, the free exercise of his religion, and the safeguard of his own laws administered by functionaries of his own nation, was granted by Solyman to France in 1535. An extremely moderate custom duty was the only impost on foreign merchandise; and the costly and vexatious system of prohibitive and protective duties has been utterly unknown among the Ottomans. No stipulation for reciprocity ever clogged the wise liberality of Turkey in her treatment of the foreign merchant who became her resident, or in her admission of his ships and his goods." [13]

As a manifestation of the origins of the extraterritoriality, Liu quotes other legal scholars that even go so far as to dismiss "all other explanation" for the Ottoman concessions (p. 64-5). One

scholar named Renault said:

> "I repeat that there has existed no period in the history of Constantinople in which foreigners have not enjoyed the advantages, and been subject to the disabilities, of extraterritoriality. The existing system of Capitulations [i.e. the extraterritorial privileges] is a survival rather than, as it is generally represented, a new invention specially adapted to Turkey. Still less is it a system, as it is often said to be, of magnanimous concessions made by far-sighted sultans of Turkey in order to encourage foreigners to trade with and reside in the empire. The Capitulations were neither badges of inferiority imposed on foreigners, as they have been described, nor proofs of exceptional wisdom peculiar to the sultans. As a fact, foreigners have never held so important a position in the capital under Ottoman rule as under that of the Christian emperors, and especially at the close of the twelfth century" (p.65).

Thus, he rejected all explanations but that of the system as a "survival" from the past. Indeed, it is a fact that the dhimmi system is a Muslim tradition, and seems to have been a tradition in general in Constantinople itself as well. However, I'm inclined to agree with Liu that it was all those other factors that gave "the sultans an additional impetus to make their concessions".

Hence, following the conquest of Constantinople, the so-called "millet system", a kind of dhimmi system, emerged. It was a way of handling all the various religious minorities that actually resided in there. Levy (1994, chapter 3, pp. 42-70) makes an interesting note in relation to this:

> "Until recently it was generally believed that, following the conquest of Constantinople in 1453, Mehmed the Conqueror molded the Ottoman millet system into its definitive form. According to this traditional version, Mehmed established separate, parallel, and autonomous organizations for his Orthodox, Armenian, and Jewish subjects. // These were supposedly similar, statewide structures with well-defined hierarchies, controlled from Istanbul by their respective ecclesiastical leaders, the Greek and Armenian Patriarchs and the Jewish Chief Rabbi. Recently, however, this portrayal of the millet system has been shown to be greatly oversimplified and incorrect. The Ottomans, it appears, did not develop rigidly uniform structures for their minorities. Rather, their pragmatism and laissez-faire attitudes allowed for the emergence of flexible arrangements, resulting in the development of diverse structures of self-government. These arrangements took into account the needs and interests of the state, as well as the particular circumstances of each of the minority communities."

Garnett (1911, p. 156) explains these so-called "capitulations" in more detail:

> "In European States generally a foreigner therein resident is amenable to the laws of the country and enjoys no greater privileges or immunities than its natives, foreign embassies and consulates only being exempt from this rule. In Turkey, however, all European foreigners enjoy the same immunities as diplomatists in other countries. Their dwellings or business premises cannot be entered by the Ottoman police without the consent of their respective consuls, to whom notice must immediately be given in case of the arrest of one of their subjects, nor can a foreigner be tried for any offence before a native court unless represented by his consul, who is entitled to appeal against the sentence and its execution should he consider it unjust. // All suits in which foreigners

> are alone the litigants are tried in their own consular courts, and between foreigners and Ottoman subjects in mixed courts at the sittings of which a representative of the consul must be present. // The taxes and dues which may be levied upon foreigners are also regulated by treaty, and can only be increased with the consent of their Ambassadors."

Note that these were non-military and non-political (in the modern sense of international politics) but rather personal law capitulations. They were on principle given to any individual, not because they were subjects to any particular other system of laws, like the French or British, and the Turkish government had signed a treaty with the corresponding government, but because they were not Muslim and wanted to live by non-Muslim laws. This seems to be a forgotten tradition, a tradition of diverse structures of self-government and of tolerance and laissez-faire attitudes towards minorities. [14]

Liu also mentions the existence of extraterritoriality in "Algiers, Morocco, Tripoli, Tunis, Persia, Muscat, Zanzibar, Senna (in Arabia), Egypt, Congo, Ethiopia, and Madagascar", all in adherence to the principle actor sequitur forum rei. (p. 69-74).

## Imperialism in the Far East?

But as Liu describes extraterritoriality in the Far East, it turns out that the picture looks different than in the Levant and Africa – "the assertion of territorial jurisdiction was quite general in the more important countries of Asia prior to the introduction of extraterritoriality in the nineteenth century" (p. 77). They simply "were not in the habit of granting to foreigners extraterritorial privileges" (p. 83). Liu mentions some religious reasons for this:

> "As is well known, Confucianism and Buddhism, the dominant systems of philosophy and religion in the Far East, make no discriminating distinctions between the native and alien. They teach tolerance and indulgence to all alike. For this reason, the peculiar situation to which the Mohammedan religion gave rise in regard to the unbeliever did not exist in Eastern Asia." (p. 76)

Thus, comparable amounts of tolerance might to some extent already have been present, also because of religious reasons. As Liu notes, the extraterritorial privileges that later were introduced don't appear to have come from any of the various reasons we have considered so far (i.e. religion, inviting trade, etc). Moreover, China probably was at least as civilized a country as any Western country at that time, although certainly different in many aspects.

This made Liu seek the answers to the rise in extraterritoriality in the opinion in the West that the Oriental legal systems were "deficient". He refers to a British Nobleman who supposedly said "[t]he Chinese laws [...] are not only unjust, but absolutely intolerable" (p. 85, emphasis in Liu).

Liu tells us that "extraterritorial rights have been enjoyed by foreign Powers in China, Japan, Corea, Siam, Borneo, Tonga and Samoa" (p. 91), mixed cases being handled by the principle actor sequitur forum rei. When it comes to the Far East, Liu seems to be of the opinion that "had it not been for the insistence of the foreign merchant – an insistence often amounting to open violence – it is difficult to speculate how soon the East would have waked up to the need of contact with the Occident" (p.76-7).

Thus, the reason extraterritoriality became so wide-spread during the nineteenth century probably was, after all, due to some kind of imperialism on behalf of the newly emerged territorially sovereign states of Europe. This appears to be an offense and a contradiction made by some territorially sovereign states also today, i.e. that of territorially sovereign states forcing other territorially sovereign states to adopt their laws and hence non-territoriality. [15]

Although one could easily believe that extraterritoriality was imposed on China and other countries in the Far East very late, one should also remember that Liu actually also provided an example of 9th century Chinese extraterritoriality, i.e. when "a Mussulman was charged by the Emperor of China with the power to decide the disputes which arose among the men of the Mohammedan religion in the ninth century" (p. 50). Thus, it seems that non-territorial governance have existed very early both in Africa, Europe, the Levant and the Far East, indeed, all the places Liu studied.

## The Rise of Territorial Sovereignty and Territorial Intolerance

From what we have seen so far, it's more than tempting to draw the very important conclusion that the origins of non-territorial governance and extraterritoriality – with its dominant features being the principles of personality of laws and of the non-territorial implementation of the principle actor sequitur forum rei – is at odds with the territorial governance as we know it today. Indeed, the two systems are nothing but totally different, judging by their guiding principles. The versions of extraterritoriality usually connected to the term and most often discussed today rather seem to have come from imperialist notions on behalf of the emerging or already territorially sovereign states.

But when, how and why did these territorially sovereign states arise? Liu informs us:

> "During the sixteenth and seventeenth centuries, an era of dynastic and colonial rivalry set in. The discovery of America initiated among the more powerful maritime Powers of Europe the struggle for colonial possessions. The ascendancy of these Powers aided their assertion of an exclusive territorial sovereignty, until 1648 the treaties making up the Peace of Westphalia accepted the latter as a fundamental principle of international intercourse. This development of territorial sovereignty was distinctly fatal to the existence of the system of consular jurisdiction [i.e. the extraterritorial courts], and facilitated considerably its decadence in Europe, because it was founded on the opposite theory of the personality of laws" (p. 37).

Thus, it seems like the Peace of Westphalia in 1648 was a decisive year, as the idea of exclusive territorial sovereignty replaced the theory of the personality of laws as the fundamental principle of international intercourse. However, as Liu indicates, the race for colonial possessions and territorialism had already started. Territoriality didn't follow from the peace treaties but instead the idea of territoriality seems to have been an important reason for the Thirty Years War to begin with. [16]

How was non-territorial governance replaced by territorial sovereign states? Liu tells us:

> "The methods by means of which the abolition of extraterritoriality has been accomplished or attempted are varied. Broadly speaking, they may be classified under the following six categories: — (1) by passing under the sovereignty of States which do

> not recognize or grant the right of exemption from local jurisdiction; (2) by passing under the temporary jurisdiction of such a State; (3) by breaking off from a State in which the extraterritorial system exists; (4) by becoming a protectorate of a State which does not concede rights of extraterritoriality; (5) by unilateral cancellation; and (6) by diplomatic negotiation leading to a mutual agreement on the abolition or preliminaries to it" (p. 103).

The technical details of each and every case in which extraterritoriality was abolished are very interesting, but what's really interesting are the reasons put forward why territorial sovereignty was to be preferred. This makes the last two categories of special interest, since they involve statements defending the changes.

The diplomatic negotiations Liu discusses deals with situations where it turns out that one or more territorial sovereign states have one-sided extraterritorial rights in another state, and the latter wanting these extraterritorial rights to end. A sentence that captures much of the spirit of such negotiations is the following, were Liu summarizes a Turkish attempt to end the foreign extraterritorial rights: [17]

> "... the Capitulations were disadvantageous alike to the foreigner and to the Ottoman Government; that they created 'a multiplicity of governments in the Government;' and that they were an insuperable obstacle to all reform" (p. 183).

Here we first see a claim that the extraterritorial rights were disadvantageous to the foreigner, a dubious claim the Turkish delegates contradicts in other statements:

> "Indeed, it was no rare thing to see judgments given against foreigners remain unexecuted." As a matter of fact "the Turkish authorities were tied by the treaty restrictions, of which the consular officers made the widest use 'in order to withhold deliberately from justice offenders who had infringed the public order and security of the country'" (p. 187-8).

If anything, there seems to have been a great disadvantage to the Turkish citizen, to the plaintiff of such cases.

Secondly, the sentence of the previous quote seems to be correct insofar as it recognized the disadvantages of the extraterritorial rights for the Government seeking territorial sovereignty. It is of course not an argument at all, but an assertion.

Thirdly, the extraterritorial capitulations are described as "governments in the Government" (or States within States as is a more common expression), whereas the truth is that various governments peacefully coexist in the same territory. Extraterritorially this is even true for the present territorial local and State governments within a federal Government and its territory. That's a problem for a Government seeking to be a territorially sovereign monopolist. It dislikes the competition and obviously tries to abolish it by picturing itself as some kind of mother-government with numerous wild children running around wildly – not very convincing, nor very true.

Fourthly, the extraterritoriality supposedly was "an insuperable obstacle to all reform" [18]. But what was to be reformed?

We receive an indication in the following summary of the Turkish argument:

> "The Turkish delegation maintained with no less insistence that existing Turkish legislation amply met the requirements of modern life; that one could without any apprehension leave to the Grand National Assembly the duty of applying to this legislation such modifications as might seem necessary from time to time; that the Turkish judicature, which had been recruited for over forty years from among the graduates of the faculty of law [in Constantinople], was fully qualified for its task, and that foreigners no less than Turkish nationals would find in the legislative and judicial system of Turkey all the guarantees required for the safety of their persons and their interests" (p. 189-90, Liu citing Parliamentary Papers, p. 481).

This could hardly be legal reform of the Turkish laws, since that could be accomplished anyway, and in fact, they had already to a large extent been reformed. And it can hardly be the rights of foreigners that were the main concern, a point we just recognized above. Instead, it seems that the "reforms" are those of the territorially sovereign Government, trying to impose whatever "might seem necessary from time to time" to them.

## Territorialist Power Urge

Lets hope they had better reasons than such for abolishing extraterritoriality. The whole argument of the Turkish delegates, insofar it can be called an argument at all, represents the power urge, which can be found in all other territorial governments as well. In what seems to be more than a mild ignorance of its past, the delegates finally wanted to make Constantinople a place where territorial sovereignty was the rule.

Indeed, at the Conference of Lausanne in 1922-3 it was recognized "that according to present-day ideas of law the capitulatory régime is regarded as liable to diminish the sovereign powers of an independent state; and it is intelligible" (p. 185, Liu quoting one of the delegates). Power of the state seems to have been the words of the day. Is there really much difference today?

Liu cites another very interesting case; the treaty between Turkey and Soviet Government in Russia in 1921, ending the extraterritorial rights in Turkey:

> "The Government of the R.S.F.S.R. considers the Capitulatory régime to be incompatible with the free national development and with the sovereignty of any country; and it regards all the rights and acts relating in any way to this régime as annulled and abrogated" (p. 185).

It seems non-territorial governance indeed is incompatible with "free national development" and territorial state sovereignty. We all know the results of "free national development" in Leninist and Stalinist Russia. [19]

Nevertheless, one might grant the Turkish Government the acknowledgement that there was a fair amount of hypocrisy involved on the part of the Powers that held extraterritorial rights in Turkey. After all, these were territorial sovereign states themselves, not willing to grant the same rights to others. What was to be expected from Turkey if Turks weren't allowed similar rights abroad?

Another aspect that also is striking is that the extraterritorial rights somehow seem to have belonged to the territorial states and not its subjects. In a way, this kind of territoriality seems to be a way for the territorial monopolist to reach into other territorial monopolies in order to impose its will on its subjects also abroad. This modern version of extraterritoriality clearly differs from the historical origin. Territorial enclaves in other states are still part of territorialism, rather than non-territorialism, and do not include the concept of personal law and the historically related principles.

It wasn't only in relation to Turkey that this kind of "reasoning" took place. Liu also mentions Persia and once again the Soviet government excelled:

> "[T]he R.S.F.S.R formally affirms once again that it definitely renounces the tyrannical policy carried out by the colonizing governments of Russia which has been overthrown by the will of the workers and peasants of Russia. // Inspired by this principle and desiring that the Persian people should be happy and independent and should be able to dispose freely of its patrimony, the Russian Republic declares the whole body of treatises and conventions concluded with Persia by the Tsarist Government, which crushed the rights of the Persian people, to be null and void" (p. 198, Liu citing the Soviet/Persia treaty).

Liu doesn't mention this, but it seems that there is a possibility that that it was some kind of reciprocal system that was abolished. After all, the same treaty declared "that Russian subjects in Persia and Persian subjects in Russia shall [...] be placed upon the same footing as the inhabitants of the towns in which they reside; they shall be subject to the laws of their country of residence, and shall submit their complaints to the local courts" (p. 198). If this is so, it is evident that the former quote makes sense only if one replaces "the people" by "the people in power".

Similar motives were propounded in Japan and Siam. According to Liu (p. 215), "Siam gave the following as reasons for requesting its abolition: (1) that it invaded the sovereignty of Siam, a free nation; (2) that it made the administration of impartial justice difficult, if not impossible; (3) that it put obstacles in the way of the maintenance of order, being a continual affront to Siam's dignity and a fruitful source of irritation; (4) that it was expensive – involving, as it did, the maintenance of European judges and advisers; and (5) that it tended to discourage the completion of the Siamese codes of laws then in progress [...]."

In China, Liu tells us, there were serious objections to the system of extraterritoriality:

> "(a) In the first place, it is a derogation of China's sovereign rights, and is regarded be the Chinese people as a national humiliation.
>
> (b) There is a multiplicity of courts in one and the same locality, and the interrelation of such courts has given rise to a legal situation perplexing both to the trained lawyer and to the layman.
>
> (c) Disadvantages arise from the uncertainty of the law. The general rule is that the law to be applied in a given case is the law of the defendant's nationality, and so, in a commercial transaction between, say, X and Y of different nationalities, the rights and liabilities of the parties vary according as to whether X sued Y first, or Y sued X first.

> (d) When causes of action, civil or criminal, arise in which foreigners are defendants, it is necessary for adjudication that they should be carried to the nearest Consular Court, which might be many miles away; and so it often happens that it is practically impossible to obtain the attendance of the necessary witnesses, or to produce other necessary evidence.
>
> (e) Finally, it is a further disadvantage to the Chinese that foreigners in China, under cover of extraterritoriality, claim immunity from local taxes and excises which the Chinese themselves are required to pay" (p. 223-4). [20]

The wish to have full power over a certain territory is evident in both the Siamese and Chinese objections. However, one must still recognize the demand made by Chinese Prime Minister Chin in 1919 where he "made it quite clear [...] that all future treaties between China and the new or old nations would be based absolutely on equality, reciprocity, fairness and justice" (p. 227).

After all, as noted above in the Turkish case, the others were territorial sovereign states themselves, not willing to grant the same rights to China. Such hypocrisy and actual legal discrimination against foreigners in the own country, is indeed objectionable.

In relation to the rise of territorialism, it is interesting to note that the framing of the constitution of the United States of America and of the constituting states, were also based on the idea of exclusive territorial sovereignty. [21]

Despite all the pledges to individual sovereignty, the people went from British territorial rule, to being ruled by territorial states in a federation. The states could secede, but not groups and individuals within the states. Under real non-territorial governance, secession is possible down to the level of the individual, exactly in the way it seems to have been historically. Thus, the US constitution seems to be based on the same idea as that of for example Soviet Russia, i.e. that of territorial governance.

## Territorialism, Major Warfare and Mass-Murder

The idea of exclusive territorial sovereignty was firmly established in The Westphalian Peace, although certainly not a new idea, as noted above. These Peace treaties have received their fair share of criticism. It is interesting to note that criticism also comes from major potentates of today. For example, here's a former Secretary General of NATO:

> "It is my general contention that humanity and democracy - two principles essentially irrelevant to the original Westphalian order - can serve as guideposts in crafting a new international order, better adapted to the security realities, and challenges, of today's Europe. The Westphalian Peace, signed here in Münster, was the first all-European peace after the first all-European war. It has shaped our thinking about the structure of the international system, and thus about war and peace, perhaps more than any other single event in the last 350 years. Yet the Westphalian system had its limits. For one, the principle of sovereignty it relied on also produced the basis for rivalry, not community of states; exclusion, not integration. Further, the idea of a strong, sovereign state was later draped with nationalistic fervour that degenerated into a destructive political force. The stability of this system could only be maintained by constantly shifting alliances, cordial and not-so-cordial ententes, and secret agreements. In the end, it was a system that

> could not guarantee peace. Nor did it prevent war, as the history of the last three centuries has so tragically demonstrated" (NATO 1998).

He was absolutely right about the importance of The Westphalian Peace in the way it seems to have come to shape the way of thinking in the years that has followed (while, of course, the same thinking was originally behind the treaty itself, made up and signed by aspiring territorial rulers). Territorial sovereignty has indeed produced a basis for rivalry, not community; exclusion, not integration; it has produced strong monopoly governments, often nationalistic, intertwined in various secret alliances; it has produced not peace but the most horrific large-scale wars this planet has ever seen. [22]

But although the NATO Secretary General seems to be basically right about this, unfortunately he also seems to be stuck in the mindset behind The Westphalian Peace treatises himself [23]. He still thinks in terms of territorial sovereignty and his vision seems to be a set of all-encompassing treaties between territorially sovereign states that would ensure that these states don't fight each other, "the ideal of a global institution including all nations", as the NATO Secretary General put it. After all, if we had a World Government, encompassing all known inhabitable territories on the planet, whom would this government fight? "What sets this process apart from the Westphalian system", writes the NATO Secretary General, "is the willingness of states to cede elements of national sovereignty for the common good of a united Europe. It thus aims directly at eliminating those root causes of conflict that Westphalia could not overcome."

For sure, a World Government couldn't fight other governments, but is it really "the root cause"? I believe not. There is indeed one conspicuous omission from this kind of reasoning; the fact that all territorially sovereign states still can fight the people living in its own territory. It is most remarkable that no mention comes of the fact that it is these Westphalian territorial monopolies on the use of force that has enabled really horrific large-scale mass murdering, besides those large-scale wars. I'm talking about the death camps in places like Nazi-Germany, Soviet Russia, China, etc. A World Government is no remedy for this – au contraire – because the possibilities to escape or the likelihood of foreign intervention would then be as close to zero as one could get. [24]

Thus, the mindset behind The Westphalian Peace treatises is still present and is still shaping the future. [25] Here we have one of the most powerful persons walking this planet (i.e. the Secretary General of NATO), one that is wise enough to realize the inherent problems of the past ideas, yet ending up recommending more of that sort. It seems to me it would be far wiser to recommend the opposite of those past ideas, to recommend non-territorial governance instead of new versions of territorial governance.

That would imply a system not of the colonial kind, where territorial sovereigns impose their laws on another state, nor of the modern kind, where territorial sovereigns impose their laws on people also outside of their territory (as the examples noted in footnote 23 above). Rather, it would be a system where each and every one has the full political freedom of choosing and having the government he wants, with as much economic freedom as desired. Then people would have and would be judged by the laws they find theoretically, practically and morally right, wherever they happen to be geographically. This would hold for ethnic, religious or whatever kind of minority, all the way down to the smallest minority, the individual. [26] This would of

course also enable anyone within the majority (i.e. religious, ethnic, etc.) the possibility to opt out from any laws of the majority that one does not approve of.

Such non-territorial governance would naturally eliminate much of current and territorial disputes and the risk of further major warfare, including the use of weapons of mass destruction. [27] It would also naturally eliminate much of the risks of territorially restricted terror regimes imposed by the monopolist government on people living in that particular territory.

We should, however, not be led into believing that non-territorial governance would eliminate all abuses – everything can be abused – and it is a fact that earlier non-territorial governance was transformed into territorial authoritarianism. And also non-territorial governance can be established in both a tolerant and an intolerant way, as history clearly shows. Abuses were abundant also under non-territorial governance. Nevertheless, by eliminating any claims to territorial sovereignty, or curbing any early seeds to such claims, the major warfare and mass-murder of territorialism is far less likely to occur again.

## Qua lege vivis?

Now, when one thinks of it, the origins of extraterritoriality or non-territorial governance perhaps aren't that strange at all. For most of our common history, people have lived as nomads in small hunter-gather societies or in territorially dispersed communities of low average population density where strict borders were not claimed or upheld. In such societies they developed their own set of moral standards and laws (but perhaps mostly not yet written but memorized legislation). It became only natural that the laws followed the persons, not the territory. When encountering people from other such non-territorial communities, it would seem only natural to expect that those others lived by different moral standards and laws. To avoid conflict, it would be best not to try to impose one's own moral standards and laws on those others. To avoid that others try this, it only seems natural to abstain from it oneself. In case conflict arises, the best way to avoid further conflict would be to let the defendant be judged by his laws. Hence, the common question on a stranger's origins related to his law and customs, not only to his place of birth & ethnicity. Non-territorial governance thus presents itself as the tolerant and peaceful solution. And although Liu may be presenting the early as well as later traces of extraterritoriality, he was referring to the documented traces. More likely, the system is as old as mankind itself.

As I stated at the beginning, almost everywhere we've had it, yet almost nobody knows about it. Yet, it is the current territorial governance that is the historical anomaly. Hopefully, this review will bring more people out of the current territorial intolerance to learn more about this part of mankind's forgotten legacy. Fortunately, there have been, as well as are, people considering non-territorial governance alternatives [28]. With just a little bit more of non-territorial tolerance, maybe the current territorial intolerance will fade away. That would at the same time signify the return of non-territorial governance.

Maybe, it will once again be perfectly natural "that five men, each under a different law, would be found walking or sitting together." Maybe one day it will once again be perfectly natural, on the encounter of a stranger, to ask:

Qua lege vivis? According to what law are you living?

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## Endnotes

* The author would like to express gratitude towards Mr. John Zube for helpful comments and references. All errors are those of the author. A longer bibliography on this topic is available upon request from Mr. Zube at jzube@acenet.com.au.

[1] Political scientist Kayaoglu (2002) refers to Liu and also notes that: "Territorial sovereign states occupy current political space. Territorial sovereignty is not a timeless characteristic of the state system but is unique to the modern state system. Although territorial sovereign states emerged in the seventeenth and eighteenth centuries, it is now unimaginable to find a piece of territory over which at least one political entity does not claim absolute territorial jurisdiction." It should perhaps be noted that the high seas and the ground under them is still largely unclaimed, apart from the ever-expanding coastal areas that are claimed.

[2] Extraterritoriality has also been called exterritoriality, a-territoriality or non-territoriality. Any differences among these terms are disregarded unless explicitly commented on.

[3] Perhaps Liu was influenced by the Zeitgeist of the 1920's, speaking of races; today a more fashionable term would be ethnicity.

[4] It also appears the "perioeci" enjoyed Spartan protection as well as the right to manage their own communities.

[5] For the record, Maitland (1898) cites Agobard in the following way: "In a famous, if exaggerated sentence, Bishop Agobard of Lyons has said that often five men would be walking or sitting together and each of them would own a different law". He refers to "Agobardi Opera, Migne, Patrol, vol. 104, col. 116: 'Nam plerumque contingit ut simul eant aut sedeant quinque homines et nullus eorum communem legem cum altero habeat'." Gibbon (chapter 38, footnote 69) provides exactly the same quote, but with some extra words added: "Tanta diversitas legum quanta non solum in [singulis] regionibus, aut civitatibus, sed etiam in multis domibus habetur. Nam plerumque contingit ut simul eant aut sedeant quinque homines, et nullus eorum communem legem cum altero habeat (in tom. vi. p. 356)."

[6] Moreover, it isn't plausible to demand that others should keep themselves informed of the details and changes in the law under which you live, and they don't. Also, some of those considering personal or private law today seem to be unaware of the principle actor sequitur forum rei. For example, Benson (1990) believes that arbitration would be the likely solution, "likened to formal or informal extradition treaties among political entities" (p. 32). This even seems to be the exact opposite of the principle at hand. Also Friedman (1973) seems to be unaware of this principle. He means that there are three ways in which a conflict between laws could be handled, none being the principle at hand: "The most obvious and least likely is direct violence – a mini-war between my agency, attempting to arrest the burglar, and his agency attempting to defend him from arrest. A somewhat more plausible scenario is negotiation. Since warfare is expensive, agencies might include in the contracts they offer their customers a provision under which they are not obliged to defend customers against legitimate punishments for their actual crimes. When a conflict occurs, it would then be up to the two agencies to determine whether the accused customer of one will or will not be deemed guilty and turned over to the other. // A still more attractive and more likely solution is advance contracting between the agencies. Under this scenario, any two agencies that faced a significant probability of such clashes would agree on an arbitration agency to settle them - a private court. Implicit or explicit in their agreement would be the legal rules under which such disputes were to be settled."

[7] One might have concerns about people having laws that allow coercion and even murder. I believe that would be and has been dealt with by stipulating that the own members/citizens were prohibited from dealing with people under such laws. Bad people and laws were and would be regarded as pariah. The same holds for cases where defendants are convicted but the own system of laws do not impose the verdict. One way to solve this latter is for the legal system of the defendant to adopt all claims, especially things like fines, and then itself claim it from the defendant. There are also cases, like in medieval Iceland, where the plaintiff could sell his claim, and most probably the buyer would be someone within the same system of law as the defendant. For discussions of things like this, see for example Benson (1990), Long (1994) and Friedman (1973).

[8] Furthermore, according to Maitland (1898), the so-called Lex Salica was "a wonderful 'system of personal laws'" and "let us remember that, by virtue of the Norman Conquest, the Lex Salica is one of the ancestors of English law."

[9] From Quran Sura cix: "Say: O ye unbelievers! // I worship not what ye worship, // And ye are not worshippers of what I worship; // And I am not a worshipper of what ye have worshipped, // And ye are not worshippers of what I worship. // To you your religion; and to me my religion." As opposed to this, upon converting the first French king to Christianity, the baptizer gave the following intolerant advice: "Burn what you have believed and believe what you have burnt!" Later practices followed the intolerant maxim: "Cuius regio, eius religio!"[The religion of the subjects has to follow the religion of the ruler]. Even Genghis Khan was tolerant when it came to religion. The "enlightened" Frederic II of Prussia went only so far as to declare: "Believe what you will – but obey!" The notion of "to you your religion; and to me my religion", seems far more tolerant, to say the least.

[10] There are people that advocate the abolition of dhimmi rights, existing in various forms also under Saddam Hussein in Iraq, since people believe they are second-class citizens without a right to vote in democratic elections. However, a far more beneficial path for any minority would of course be an extension of such dhimmi rights, rather than submitting to the laws of the majority.

[11] Liu also notes that [i]n some of the treaties, a right of appeal was allowed to the local courts in cases where natives proceeded against Christians in their consular courts" (p. 60).

[12] Similar concession were later granted to "Great Britain, the Netherlands, Austria-Hungary, Sweden, Italy, Denmark, Prussia and later Germany, Russia, Spain, Persia, Belgium, Portugal, Greece, the United States, Brazil, and Mexico. The extraterritorial rights conferred by these treaties were formally abolished in 1923" (p. 67-9).

[13] To support these claims, Creasy (p.208) refers to "a remarkable State paper published by the Ottoman government, 1832, in the Moniteur Ottoman, justly claiming credit for their nation on this important subject. Mr. Urquhart cites, in his "Turkey and her Resources", the following passages from this official declaration of Turkish commercial principles:

> "It has often been repeated, that the Turks are encamped in Europe; it is certainly not their treatment of strangers that has given rise to this idea of precarious occupancy; the hospitality they offer their guest is not that of the tent, nor is it that of the Turkish laws; for the Mussulman code, in its double civil and religious character, is inapplicable to those professing another religion; but they have done more, they have granted to the stranger the safeguard of his own laws, exercised by functionaries of his own nation. In this privilege, so vast in benefits and in consequences, shines forth the admirable spirit of true and lofty hospitality.
>
> "In Turkey, and there alone, does hospitality present itself, great, noble, and worthy of its honourable name; not the shelter of a stormy day, but that hospitality which, elevating itself from a simple movement of humanity to the dignity of a political reception, combines the future with the present. When the stranger has placed his foot on the land of the Sultan, he is saluted guest (mussafir!). To the children of the West who have confided themselves to the care of the Mussulman, hospitality has been granted, with those two companions, civil liberty according to the laws, commercial liberty according to the laws of nature and of reason.
>
> "Good sense, tolerance, and hospitality, have long ago done for the Ottoman Empire what the other states of Europe are endeavouring to effect by more or less happy political combinations. Since the throne of the Sultans has been elevated at Constantinople, commercial prohibitions have been unknown; they opened all the ports of their empire to the commerce, to the manufacturer, to the territorial produce of the Occident, or, to say better, of the whole world. Liberty of commerce has reigned here without limits, as large, as extended, as it was possible to be. Never has the Divan dreamed, under any pretext of national interest, or even of reciprocity, of restricting that facility, which has been exercised, and is to this day in the most unlimited sense, by all the nations who wish to furnish a portion of the consumption of this vast empire, and to share in the produce of its territory.

> "Here every object of exchange is admitted and circulates without meeting other obstacle than the payment of an infinitely small portion of the value to the Custom-house.
>
> "The extreme moderation of the duties is the complement of this régime of commercial liberty; and in no portion of the globe are the officers charged with the collection of more confiding facility for the valuations, and of so decidedly conciliatory a spirit in every transaction regarding commerce.
>
> "Away with the supposition that these facilities granted to strangers are concessions extorted from weakness! The dates of the contracts termed capitulations, which establish the rights actually enjoyed by foreign merchants, recall periods at which the Mussulman power was altogether predominant in Europe. The first capitulation which France obtained was in 1535, from Solyman the Canonist (the Magnificent).
>
> "The dispositions of these contracts have become antiquated, the fundamental principles remain. Thus, three hundred years ago, the Sultans, by an act of munificence and of reason, anticipated the most ardent desires of civilised Europe, and proclaimed unlimited freedom of commerce."

[14] Also note that often so-called "mixed courts" for "mixed cases" were established in order to handle the multiplicity of various laws in one particular location. Such mixed courts would be a very practical solution, especially for really small extraterritorial communities or for widely dispersed extraterritorial communities. Some jurists obviously knew more than one system of law at that time as well (something also Liu notes in several places).

[15] There are for example the modern cases of occupation troops, e.g. in Japan or Germany, living under their own laws rather than Japanese or German laws. "The foreign troops ... have their own police forces, their own courts, fiscal privileges, customs officials, postal services, even rights of the hunt, ... Many ... institutions & services are closed to Germans in their own country" (Peace Research Abstracts Journal, ref. no. 32399). Moreover, "An agreement has been signed between the Chiang and the Johnson Governments settling the status of US forces on Taiwan, allowing extraterritorial rights, etc." (Ibid, ref. no. 29902).

[16] Indeed, Crawford (1967, p. 6) notes that territorial domination was decisive for the leaders of France in the foreplay to The Thirty Years War: "Still later in French history, this political rather than religious determination of policy is clear in the case of Cardinal; for if he made war on the French Protestants, it was not to destroy their religious freedom, which he left untouched, but to draw the teeth of the political and military privileges allowed them by the Edict of Nantes, privileges (of private armies and fortified towns) which had made them a state within the state, the rallying-point of feudal disaffection, the major obstacle to Richelieu's policy of strengthening the central government of the Crown. It was perfectly in accord with this policy that Richelieu subsidized the Protestant armies of Gustavus Adolphus of Sweden in the Thirty Years War, for in doing so he was weakening the Hapsburgs [sic!], the most powerful enemies of France." Richelieu (1585-1642) was a French Cardinal, Duke, politician and a prominent theorist of nationalism.

[17] If Turkey seems to receive an undue amount of attention, it is probably because of the late date and the fine documentation of the extraterritorial rights there. This should not be seen as a

one-sided critique of Turkey – if anything, Turkey was remarkable for having maintained a much higher degree of tolerance far longer than most other states.

[18] To the extent that extraterritoriality was providing some freedom to experiment and provided comparisons between different systems it was often, I presume, a stimulant to reforms, just like experiments in medicine, farming, science and technology are.

[19] According to R.J. Rummel, "Lenin's rapacious agricultural policies 1918-1923 created a famine that killed by starvation and associated diseases about 7,300,000 people. Half of these victims comprise democide, the other half are the unintentional victims of failed policies." R.J. Rummel also writes that "From 1900 to 1923, Turkish dictatorships murdered about 2,100,000 Armenians." See http://www.hawaii.edu/powerkills/welcome.html for both quotes and his references. This is "free national development", early 20th century Soviet and Turkish style.

[20] In reference to (b) it should be noted that there are a lot of perplexing situations also under territorial laws. Which court is competent is often in doubt today as well.

[21] This is also noted by Raustiala (2004): "Assumptions about territory permeate legal systems. American law is no exception. Territoriality is a defining attribute of the Westphalian state, the model upon which the framers of the US Constitution based their aspirations for a new nation."

[22] We should, however, not malign even the "devil". Territorial legalism has also, slowly, led to the recognition of rights of people formerly considered to be second-class citizens or even less. To the tax gathering rulers the faith of their subjects, their skin color and ideology do not matter greatly, as long as they pay their taxes and otherwise obey the commands or laws of the rulers as well. Some of this surely is a product of some kind of enlightenment. But by now it has even legally imposed kinds of reverse discrimination.

[23] Kayaoglu (2002) tells us that "[e]xtraterritoriality is a form of jurisdiction where home states continue to claim jurisdiction over the activities of their citizens are immune from local, host country's jurisdiction." In this modern version of extraterritoriality, a territorial state extends its reach beyond its own borders with the consent of the host state, but not necessarily with the consent of the individual. Today there is an even more scrupulous interpretation along the same line of thought; extraterritoriality is today often assumed to refer to the right of a territorial government to impose its law also outside of its territory, in the territory of another territorial government, given that the home state law is stricter than the host country's. This could be related to for example accounting laws, trafficking and brokering of military equipment, child pornography and trafficking, etc. This, of course, is not what extraterritoriality originally was (for or against).

[24] Indeed, there is further evidence of the spirit of Westphalia; foreign intervention is prohibited by the Treaties of Westphalia. Article LXIV reads (emphasis added): "And to prevent for the future any Differences arising in the Politick State, all and every one of the Electors, Princes and States of the Roman Empire, are so establish'd and confirm'd in their antient Rights, Prerogatives, Libertys, Privileges, free exercise of Territorial Right, as well Ecclesiastick, as Politick Lordships, Regales, by virtue of this present Transaction: that they never can or ought to be molested therein by any whomsoever upon any manner of pretence." Thus, the idea that

foreign intervention is supposedly going to be avoided by World Government is implicitly present also in the old treaty.

[25] One should also note the then still widespread belief that either the subjects should adopt the religion of their rulers or prescribed by their rulers or that people of different religions can live peacefully only if the members of different religions have their own territories. Today, this idea survives whenever people say that communists should move to North Korea or that free-market supporters should move to Hong-Kong (or wherever), so that they can have their system. This is a territorialist's notion, no doubt.

[26] This latter does not necessarily imply that an individual holds his and only his laws, but rather that the individual is allowed to secede from the current system of laws to adopt others. Having one's own laws wouldn't be very practical, I suppose.

[27] See Zube (1975) for a non-territorialists account of ABC weapons. In personal communication with Mr. Zube, he stated the following, serving as a short review: "Alas, to most this is still a non-sequitur. It took even myself quite some time before I cut myself through the jungle of opposing views – still predominant in the heads of most – to this conclusion. My "account" for ABC mass murder devices blames exactly territorialism for their production and retention, while recommending, as the optimal solution for even the unilateral destruction of such devices, by the people targeted with such devices in the hands of other and as authoritarian rulers, the adoption of exterritorial policies for defence, liberation efforts as well for the initiation of popular revolutions and military insurrections against all dictatorships armed with them. On this alternative point of view I stated about 500 points in this book, most of them alphabetized, and blamed most peace movement people for still subscribing to many views that make such wars and conventional wars not only possible but likely. It was an attempt to show to libertarians and peace lovers how they could and should deal with this threat, via certain self-help measures" (22 Dec, 2004).

[28] See for example, De Puydt (1860), Nettlau (1909) and Zube (1962). It should also be mentioned that Long (1993) has considered an approach in many ways similar to the one Liu describes, but without making any reference to the historical personal law system. In fact, there are some aspects that seem to make it a territorial system and there is no mention of the principle of actor sequitur forum rei. This could be because the modern interpretation of this principle is so out of line with its literal meaning, as noted above. Moreover, the incorporation of Muslim personal law into for example UK domestic law has been suggested lately, although intolerably rejected. I'm sure you could find more examples. It is desirable to make more references available.

[1] http://www.panarchy.org/shihshunliu/Extraterritoriality_Liu.pdf