Chapter I – Definition and Early Origins of Extraterritorial Consular Jurisdiction

DOI : 10.4000/books.iheid.800
Éditeur : Graduate Institute Publications
Lieu d’édition : Graduate Institute Publications
Année d’édition : 2014
Date de mise en ligne : 10 février 2014
Collection : eCahiers de l’Institut
ISBN électronique : 9782940503438

http://books.openedition.org

Édition imprimée
ISBN : 9782940503421

Référence électronique

Ce document a été généré automatiquement le 7 mai 2019.
Chapter I – Definition and Early Origins of Extraterritorial Consular Jurisdiction

I. Defining Extraterritorial Consular Jurisdiction

1 For the purposes of this project, ‘extraterritorial consular jurisdiction’ generally refers to the exemption, partial or complete, of aliens from the territorial laws of another state or normative culture and the application, in disputes of a foreign or mixed character, of the laws of their country of origin by their consular representatives. In other words, similar to the prescriptive, adjudicatory and enforcement immunities that diplomatic agents enjoy today in the territory of host states, extraterritorial consular jurisdiction was quite frequently assigned to foreign nationals residing abroad in the nineteenth century. The fundamental difference, however, is that most such foreign nationals were not official state representatives, but rather ordinary citizens enjoying jurisdictional immunities in another state or polity. Hence, whereas in Europe and the United States jurisdiction, particularly over penal matters, increasingly became an exclusive competence of the state on whose territory the conduct had occurred, in the Middle East and Asia, aliens were largely exempted from the application of local laws. Instead, any infractions or offences were assigned to the adjudication of a judge-consul.

2 The form that extraterritorial consular jurisdiction – or ‘extraterritoriality’, as it has been generally referred to in past decades – often took was that of the so-called ‘Unequal Treaties’. Ingrid Detter defines an unequal treaty as ‘an agreement, which favours the interests of one of the parties or of one group of parties’ and promotes factual inequality through the legal fiction of sovereign equality. Arguably, treaties technically considered to be agreements between equal and consenting states were a standard practice in the European diplomatic world. But ‘exported eastward’, they came to have a more negative connotation, defining the rules of engagement between expanding European and American powers on the one hand, and non-Western polities on the other. In the case of extraterritorial consular jurisdiction, such agreements were particularly inequitable, as,
in some cases, their genealogy indicates extremely violent enforcement, and the impossibility of their abrogation under the threat of the so-called ‘gunboat diplomacy’. Furthermore, the legal and other types of privileges that the treaties included were not usually reciprocal. For instance, a Chinese citizen in the United States could not legitimately claim the same jurisdictional privileges that an American could in China during the same period of time. Hence, as Western powers could not – or chose not – to directly colonize China, Thailand, the Ottoman Empire or Japan, they sought alternate ways to reconcile their growing desire for commerce with the need for order and security for their citizens abroad. The maintenance of capitulations in Turkey and the establishment of the so-called ‘treaty port system’ in the Qing Empire thus appeared to be an almost natural solution.

The primary epistemic argument used to institute or justify extraterritorial consular jurisdiction was usually an alleged ‘lack of law and civilization’ on the part of the host country – although the precise meaning of ‘civilization’ generally remained ambiguous. As a matter of fact, due to more or less consistent religious and cultural differences between the local inhabitants and foreign nationals, Western states asserted that the legal systems of the vast majority of Asian and Middle Eastern countries were too brutal, fallacious, vague or impure to allow Western citizens to be judged by their laws and customs. Consequently, the argument insisted on the need for an institution that granted legal securities to foreigners until such time that the host legal systems achieved similar legality and ‘civilization’. While the vehement discourse surrounding the ‘Orientalization’ of normativity in the Far and Middle East will be extensively discussed in the next chapter, Shalom Kassan expressed this logic in relatively gentle terms:

‘In countries like China, Japan, Turkey, Egypt, Morocco, and various other States of the Levant and Africa, there exist or existed, fundamental and vital differences of social habits, standards of life, laws and customs, a diversity of moral sentiments and political institutions, with a primitive animosity towards foreigners due to differences in religious beliefs. Members of a European civilization could not, therefore, possibly abide by, and live according to, their regulations. Their ideas of justice were different from those of the Western world, and were not adequate to preserve the life, property and honour of foreign citizens before native courts.’

Hence, over the course of the nineteenth century, the institution of extraterritorial consular jurisdiction, protecting the ‘life, property and honour of foreign citizens’ gradually spread throughout Asia and the Levant. Great Britain and France played a pioneering role in negotiating with or compelling local rulers to sign unequal treaties. Other nations followed. Moreover, it is important to note that, in addition to their inclusion in separate agreements, extraterritorial privileges were also subject to the so-called most-favoured nation clause, wherein the rights granted to one state by treaty were automatically expanded to any other country, interested in conducting business within its territories. Therefore, and perhaps paradoxically, with the parallel consolidation of sovereignty and territorial jurisdiction on the continent, extraterritoriality developed into an almost natural legal tool for conducting international relations with non-Western polities. This legal tool would come to be employed for an entire century in China and an even greater time in the Ottoman Empire.
II. The Early Origins and Development of Consular Jurisdiction

a) Legal Pluralism and the Non-Territoriality of Laws in Pre-Modern Social Arrangements

The construction of absolute territorial jurisdiction as a core principle of the prescriptive organization of society is a modern invention. The idea of the world map resembling a colourful puzzle, composed of an exact number of spatially delimited and separate pieces, each representing a different body of laws and mechanisms to interpret, administer and enforce them, is common sense today. However, throughout much of human history, the coexistence of empires, kingdoms, self-governed urban agglomerates, tribal political organizations and vast uninhabited lands, together with the dynamic groups of nomads, merchants, soldiers, pirates, mercenaries, explorers and religious communities, constituted a world map that more resembled the diffuse tones of an Impressionist painting, than the delimited boundaries of today. Various regional human units shared radically different yet coexisting normative systems, cosmological views and perceptions of the ‘other’, wherein the notion of a sovereign Leviathan sanctioning the ultimate legality of human behaviour presented a minor importance. In other words, the concepts of absolute sovereignty and territoriality in law were unknown, or interpreted very differently, in the pre-modern world.

Thus, during the early stages of human development, authority did not necessarily imply territoriality, nor did it aim at achieving a cohesive unity. Only in second place were the main criteria for the attribution of legal rights and obligations territorial as the gates for entering a certain community of law were often of radically different natures. In this sense, elements such as common affiliation with a certain religious, social, cultural, gender, civilization or ethnical group played a primary role. For the Sino-centric notion of the world, ‘the notion of a state as a body of people within a territorial unit was not so important as it is today. Rather, the question as to whether one was a civilized member of the Sino-centric world according to the Sino-centric cosmology was crucial.’

It therefore appears that, prior to the nineteenth century, a considerable number of cultures around the globe employed other cognitive lenses, through which a particular territorial or normative reality could be seen. Empirical evidence reveals that certain human groups may have, indeed, inhabited a spatially contained and geographically contingent piece of the globe while sharing a common set of norms that prescribed or punished behaviour. This evidence is of crucial importance when searching for both the genealogy of such early communities of law and for the concrete outcomes of their historical development. Throughout much of human history, however, neither territoriality nor positivist legality constituted a direct answer to the question: ‘Qua lege vivis?’

Recognition of the previous existence of a plurality of prescriptive systems, transversal and parallel to that instituted by the nation state, requires, however, an approach to normativity unhindered by the norms, assumptions and practices of the Western state system. Inevitably, this recognition will also inform one’s premises and ability to conduct research on matters related to the historical dimension of international law. When engaging in the study of societies that radically differ, in geographical, temporal and cultural terms, from the dominant contemporary cognitive and historical milieu, the
greatest methodological error is to analyse them utilising the value system and epistemological orientation of the 'here and now'. In other words, it is important to avoid falling into the trap of classifying and interpreting historical matters through the exclusive lens of today's (positivist) perspective. Although this is far from an easy task, being aware of the tendency towards such anachronistic analysis is already the first step towards the deconstruction of the grand-narrative, which reduces international law to merely 'a law between sovereign and equal states based on the common consent of these states'.

b) Selected Instances of Consular Institutions in Pre-Modern European Societies

Early consular arrangements that may be considered 'extraterritorial' existed for centuries before humanity settled into formally equal sovereign states. Frequently, the host community did not strictly subject foreigners to its territorial jurisdiction, nor was the law applicable to disputes always the lex fori. Because legal rights and obligations were primarily bestowed upon members of the same religious, ethnical or/and professional community, aliens often enjoyed a different legal status, wherein they would either live in accordance with their own laws and customs or be subject to a special, equitable jurisdiction. Additionally, special magistrates or consuls, appointed by either the expatriate community or the hosting city, exercised in a relatively autonomous administrative and political system, an adjudicatory jurisdiction with competence in exclusively foreign or mixed cases.

A good example of arrangements similar to the subsequent institution of consular jurisdiction is provided by what may be one of the first recorded arbitral cases in legal history. In 370 B.C., in Ancient Greece, the son of an Athenian banker Apollodorus brought a private suit against a man known as Callipus of Heracleotae. The plaintiff was an Athenian citizen, while the defendant was an alien permanently domiciled in Athens. The defendant came from the city of Heraclea, a town situated on the south eastern coast of the Black Sea. The dispute involved a certain Lycon of Heraclea who, before sailing for business to Lybia, deposited in Pasion's bank the amount of 1,640 drachmas. Lycon's profession was similar to that of today's 'international investor' – in addition to his own direct engagement in overseas business, he lent money to other merchants for their trading voyages. The merchants would, in return, pledge their ships or the goods they carried as security. Subsequently, the investor would ask for repayment of the loan, with interest, for his financial services.

As carrying all of one's capital when travelling was risky, Athenian merchants customarily entrusted a third party with safeguarding their finances while they were away. The choice of Lycon fell to the bank of Pasion, Apollodorus' father. Unfortunately, the trip ended tragically, for pirates attacked Lycon's ship, and wounded Lycon, who died at Argos. As Lycon had no natural heirs, a dispute arose regarding the legitimate heir to his fortune. Apollodorus recounts that, shortly after learning of Lycon's death – Callipus went to Pasion's bank to ask the cashier if the bank knew the deceased. The bank's cashier answered that, yes, they did know him: 'For he banks with us. But why do you ask?' 'Because', answered Callipus, 'I'll tell you. He's dead, and I'm the Heracleian consul. I want you to show me the accounts so that I may learn what he left. For it is my business to look out for all Heracleian affairs.'
Callippus was the proxenus of the Haracleotae people in Athens. The semantic meaning of the term proxenos is ‘public guest or friend’. In addition to providing an example of the remarkable modernity of commercial litigation in Ancient Greece, the case provides crucial evidence of one of the earliest, if rudimentary, articulations of a system of consular jurisdiction in the history of international law. Apparently, the proxenus was traditionally a national of the foreign polis, formally appointed by either his community of origin or the public authorities of the host city. His functions were strikingly similar to those prescribed by the modern corpus of consular law. Moreover, it appears that the proxenus sometimes acted as an arbitrator in ‘international’ as well as private disputes, exercising adjudicative jurisdiction in cases involving foreigners of his ‘nationality’.

Similarly, with the expansion of its military and economic hegemony, Rome, in the age of antiquity, became a natural centre for migrants searching for work and protection. Consequently, Roman courts found themselves increasingly compelled to deal with cases involving aliens. However, the exclusion of foreigners from the enjoyment of civil and political rights equal to those of the restricted group of Roman citizens rendered the application of the Roman jus civile impossible. It was thus in response to such novel exigencies of Roman legal life that the system of peregrine praetorship was developed. In 242 B.C., Rome instituted the office of the praetor peregrinus to complement the activities of the praetor urbanus, and adjudicate cases involving foreign litigants. Hence, somewhat akin to the case of the proxenoi in Ancient Greece, Rome assigned a special jurisdiction to resident aliens, even though the praetor peregrinus was ‘just’ a Roman officer administering the jus gentium to foreigners. Thus, while a comprehensive account of the legal arrangements to which foreigners were subject in other ancient societies is beyond the scope of this thesis, it is fair to note that scholars of other pre-medieval entities argue that the custom of conferring a special jurisdictional status to aliens also existed in other ancient societies.

During the Middle Ages, the so-called system of the personality of laws developed. Following the break-up of the Roman Empire after a series of barbarian invasions, novel problems arose within European legal life. The great cultural and ethnic plurality characterizing Europe at that time, together with the lack of rigid geographic boundaries to structure and confine normativity along the lines of exact territorial delimitations, led to a pluralism and fragmentation of laws. In the absence of a territorial state, and in a world where religious and kinship ties played a considerable role in establishing the outer boundaries of a community of law, interactions came to be governed by the principle that each person could follow his or her own laws of origin. Accordingly, in the words of Bishop Agobard: ‘It often happens that five men, each under a different law, would be found walking or sitting together’. This led to the subsequent proliferation of a complex legal system, characterized by conflicts of laws in mixed litigation, as well as by the prescription of a plethora of rules by competing religious and political authorities.

The results of the application of the doctrine of the personality of laws were particularly interesting, as the doctrine provided the flexibility necessary for the parallel development and the proliferation of so-called judge-consuls. With the expansion of commerce, continental merchants began to travel increasingly throughout Europe and onwards to further destinations in the Levant and the territories of the Russian Empire. Hence, both contacts and conflicts between the bearers of competing laws multiplied. According to Keeton, ‘to these origins may be traced the functions of the mercantile consul’ – the practice of appointing a representative within a given community of traders...
for the sake of adjudicating disputes either involving aliens exclusively or in mixed litigation cases. Apparently, the practice began in the Italian city-states of Venice, Florence, Genoa and Ancona, where it consisted of special jurisdicational arrangements struck either directly with the rulers of the hosting polity or between commercial organizations. The members of the Baltic Hanseatic League also negotiated similar legal privileges for their merchants and, according to Shin Shun Liu, ‘the German merchants and other inhabitants of Wisby on the island of Gotland in the Baltic enjoyed [such] privileges in the Republic of Novgorod in Russia.’ It was therefore as a result of this highly adaptive, pluralist, and privately-oriented tradition of the commercial consuls in the Middle Ages that the East India Companies subsequently developed their autonomous adjudicatory bodies and jurisdicational concessions, obtained directly from local rulers. Similarly, as the case of China will illustrate, the East India Companies pioneered extraterritorial jurisdictional arrangements in East Asia.

Admittedly, matters dating back to the pre-modern age may easily become the subject of academic speculation. The study of history is always about making choices, which inevitably implies the exclusion and simplification of the complex and indeterminate nature of a distant reality in order to provide support for one’s more proximate arguments. From the evidence examined above, it nevertheless appears that, at least to a certain extent, foreigners in ancient and medieval times enjoyed some separate jurisdictional status, and were not subject to the laws of host societies. This separation was primarily due to the general belief that substantial religious, kinship or professional ties were needed for a person to belong to a certain normative community. For this reason, evidence of the admission and coexistence of a plurality of legal systems on a same territory exists. In these systems, different arbitrators who often had the same nationality and religion as the litigants judged cases involving foreigners. The arbitrators thus decided in accordance with a different body of laws, particularly in civil and commercial matters.

Whereas such considerations support the existence of a proto-system of consular jurisdiction in ancient Greece, Rome and, in all likelihood, other medieval societies, the difficulty lies in trying to classify this system as extraterritorial in the sense of a community’s unilateral and non-consensual exercise of prescriptive, adjudicatory or enforcement jurisdiction on the territory of another. Moreover, it is important to underline that extraterritoriality in the pre-nineteenth century world was conceptualized very differently than its more modern incarnation. Early instances of consular jurisdiction seem to have been the result of mutual concessions of hospitality – underscored by an idea of the immiscibility of the alien in one’s religious and civic community – rather than the outcome of an explicit policy of legal imperialism. Because an orthodox doctrine of the strict territoriality of laws did not exist, the ancient and medieval societal attitude towards the coexistence of a multiplicity of legal systems on a single territory appears to have been broader and more tolerant than contemporary doctrines on the attribution of jurisdiction. The fact that consular relations were, in the past, largely the prerogative of private parties or trading companies is another considerable difference between prior conceptions and those of the present. It was only with the rise of state-sovereignty on the Continent, beginning in the eighteenth century, that the state began to assume the monopoly on international consular arrangements, rendering them a prerogative of public international law. Otherwise stated, consular institutions gradually became subject to the shifting of the authority to enter into
‘international’ relations away from private parties towards its constitutions as a public and exclusive competence of the State. The greatest change that subsequently affected consular jurisdictional arrangements was their codification in the form of public treaties, backed by a significantly heightened possibility of state coercion.\textsuperscript{44}

NOTES

1. ‘Much like ambassadors in ordinary sovereign nations, citizens of Western powers in Asia and the Middle East enjoyed a form of extraterritorial protection. Extraterritoriality provided a way for Western citizens to reside outside the West yet enjoy near-total immunity from local law, as extraterritoriality as it was colloquially known at the time, reached its apogee at the turn of the twentieth century.’ Kal Raustiala, \textit{Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law}. (Oxford: Oxford University Press, 2009). 17.


6. As it will be discussed later, the violent genealogy of Unequal Treaties is particularly evident in the case of China.


8. In reference to the semi-colonial regime that European and American powers instituted in China, Siam and the Ottoman Empire, Horowitz emphasizes the apologetic role of international law in this process: ‘In the semi-colonial environment, international law embodied in unequal treaties and the associated discourse about civilization provided powerful external incentives for indigenous political elites to comply with this standard European model.’ In Richard S. Horowitz, ‘International Law and State Transformation in China, Siam, and the Ottoman Empire During the
"Unequal treaties," sometimes known as capitulations, were commonly negotiated in the nineteenth century to solve this problem. These agreements coupled open trade to extraterritorial rights for sojourning Westerners. Nations like China abhorred these coercive treaties, rightly seeing their extraterritorial provisions as a humiliation, but they lacked the power to resist.’


As it will be extensively illustrated later, the treaty port system implied the Chinese Emperor’s concession of the right to conduct free trade in a limited number of specific city-ports, such as Shanghai, Canton, Hong Kong and Macao, to foreign powers. Such rights were mostly embedded in the form of bilateral treaties that also contained provisions on extraterritoriality. In addition to the maintenance of privileged legal and economical status within the treaty ports, at the turn of the twentieth century, foreigners were also to be allowed access to the Chinese inlands in their entirety. On the establishment of the treaty-port system in China, see Eileen P. Scully, Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844-1942. (Columbia University Press, 2001); Rhoads Murphey, The Treaty Ports and China’s Modernization: What Went Wrong? (University of Michigan, Center for Chinese Studies, 1970); Chris Elder, China’s Treaty Ports: Half Love and Half Hate: An Anthology. (Oxford: Oxford University Press, 1999); John K. Fairbank, ‘The Creation of the Treaty System’, The Cambridge History of China 10, no. Part 1 (1978): 214; Paul H. Ch’en, ‘The Treaty System and European Law in China: A Study of the Exercise of British Jurisdiction in Late Imperial China’, in European Expansion and Law: The Encounter of European and Indigenous Law in 19th- and 20th-Century Africa and Asia. (Oxford: Berg, 1992); Arnold Wright, Twentieth Century Impressions of Hong Kong, Shanghai, and Other Treaty Ports of China: Their History, People, Commerce, Industries, and Resources. Vol. 1. (London: Lloyds Greater Britain publishing Company, 1908); Tai En-Sai, Treaty Ports in China: A Study in Diplomacy. (University printing office,


11. In Shalom Kassan, ‘Extraterritorial Jurisdiction in the Ancient World’, *American Journal of International Law* 29, No 1 (1935): 239. See also John Bassett Moore and Francis Whitmon, A *Digest of International Law*. Vol. ii. (US Government Printing Office, 1906). 593: ‘Owing to diversities in law, custom, and social habits, the citizens and subjects of nations possessing European civilization enjoy in countries of non-European civilization, chiefly in the East, an extensive exemption from the operation of the local law. This exemption is termed “extraterritoriality.”’ Keeton presents a similar argument when discussing the origins of extraterritoriality in the Levant: ‘The core of the problem was the difference in civilization between the foreign merchants and the local inhabitants, and the close association of the Mohammedan religion with the laws which the local inhabitants followed. These reasons in themselves were sufficient for holding that the local Mohammedan law was not applicable to foreign merchants.’ George Williams Keeton, *Extraterritoriality in International and Comparative Law*. Recueil des Cours 072. (Hague: Librairie du Recueil Sirey 1948). 295.

12. ‘The unequal treaties generally had three elements: unilateral most-favoured-nation clauses, a lack of tariff autonomy for the non-Western partner, and what was known as consular jurisdiction for Westerners. Unilateral most-favoured-nation clauses ensured “equality in exploitation”: whatever rights one Western power received had to be granted to all.’ In Kal Raustiala, Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law. (Oxford: Oxford University Press, 2009).17. See also Georg Schwarzenberger, ‘The Most-Favoured-Nation Standard in British State Practice’, *British Year Book of International Law* 22 (1945): 96–121. On the establishment of the most-favoured-nation clause in China, Cassel argues: ‘Most-favored-nation treatment and extraterritoriality would first be formally enshrined in the “General Regulations of Trade,” signed by representatives of the British Empire and the Qing Empire in July 1843 at Humen near Guangzhou and subsequently included in the Supplementary Treaty of the Bogue (Humen Tiaoyue) of October 8 the same year. Article 8 of the supplementary

13. ‘The conception that the law of a state should automatically govern the relations of all persons within the territorial boundaries of that state is, however, of modern origin.’ In George Williams Keeton, *Extraterritoriality in International and Comparative Law*. Recueil des Cours 072. (Hague: Librairie du Recueil Sirey 1948). 288.


15. ‘Again, in the early stages of human development, it was religion, race or the nationality of the people rather than the territory, which formed the basis of a community of law.’ In Shalom Kassan, ‘Extraterritorial Jurisdiction in the Ancient World’, *American Journal of International Law* 29, No 1 (1935): 240. Perhaps ‘ethnicity’, rather than ‘race’ or ‘nationality’, would be a better term.


17. According to what law are you living?


19. ‘How many legal theorists and protagonists of international relations are still convinced of the alleged “newness” of international law! Few of them are fully aware that the law of inter-State relations is nearly as ancient as the internal law of State-like societies. Few of them seem to realize how superficial it is to imagine that international law is but the crowning pinnacle of a single evolutionary process whereby the phenomenon of law, after originating in restricted spheres, gradually spread to wider circles, with the community of States coming at last. It is too often overlooked, in flagrant contradiction to historical reality, that in fact the emergence and progressive development of law occurred in parallel within human groupings of quite different types, composition and dimensions. And no less disregard of history is implied by failure to grasp the fact that international law is a phenomenon which has always emerged and developed among a group of distinct and sovereign political entities whenever sustained and organized relations have come to exist between them.’ In Roberto Ago, ‘The First International Communities in the Mediterranean World’, *British Yearbook of International Law* 53, n. 1 (1982): 213.

20. ‘There is a tendency in some writers (especially such as are given to glorify the present civilization to the extreme disadvantage of the ancient), who have not sufficiently investigated their subject, to regard this or that exceptional case, particularly so if it happens to be a prominent one, as representative of the usual prevailing conditions; and there is a still more injurious tendency in others who have not even superficially examined many issues relevant to their subject to embrace such views blindly and unreservedly.’ In Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome*. (London: MacMillan, 1911). 127.


22. ‘The barbarian was outside the pale of religion, and therefore incapable of amenability to the same jurisdiction to which the natives were subject.’ In Shih Shun Liu, *Extraterritoriality: Its Rise and Decline* (New York: AMS Press, 1969). 9. ‘We find that in the ancient world foreigners were either subject to their own laws and customs or were placed under a special jurisdiction.’ In Shalom Kassan, ‘Extraterritorial Jurisdiction in the Ancient World’, *American Journal of International Law* 29, No 1 (1935): 240. Compare George Williams Keeton, *Extraterritoriality in International and Comparative Law*. (Hague: Librairie du Recueil Sirey 1948).290: ‘The territorial law
was a law which was intimately connected with the religion and public conduct of the citizen, and it could not, therefore, be extended to foreigners who worshipped other gods, and who could not participate in the ritual practiced by citizens’.


24. Probably corresponding to today’s Turkish city of Karadeniz Ereğli, in the Zonguldak Province.


26. As a matter of evidence, Apollodorus testified that Lycon had already collected part of the above-mentioned loan through litigation on a loan that he had previously made to a third party for the purpose of conducting business abroad. That case regarded a loan Lycon made to Megacleides of Eleusis and his brother Thrasylus for a return voyage to Ace. The two merchants eventually changed their mind and decided not to sail, so the sum had to be given back to the original creditor. For the details of the dispute, see Edward Harris, ‘The Liability of Business Partners in Athenian Law: The Dispute Between Lycon and Megacleides ([Dem.] 52.20–1)’, *The Classical Quarterly* 39, no 02 (1989): 341–343.

27. The passage is cited in Benjamin W. Wells, ‘Banking in Old Athens’, *The Sewanee Review* 25, no 2 (1917): 157. Regrettably, the verdict of the dispute is not reported in the original speech, since it only contains an illustration of the oral pleadings of the plaintiff Apollodorus. Hence, we will probably never know whether Callipus managed to obtain the above-mentioned sum, if it was assigned to the banker’s son, or if, alternatively, an equitable solution was reached.


30. ‘A proxenos performed various services for the nationals of the sending State: giving them protection, obtaining security for their loans, promoting the sail of their cargos, and proving their wills if they died intestate. A proxenos also received diplomatic officials of the sending state and helped them with their official business and sometimes even with their personal affairs. A proxenos might be called upon to assist in negotiating treaties and arbitrating disputes between
the sending State and the Receiving State. On occasion a proxenos might be sent as ambassador of his own country to the country he previously represented....[T]he proxenoi, like our consuls, supplied information to the government that appointed them, and also furnished advice and assistance to the citizens who were subjects of that government whilst residing temporarily or more permanently in the territory of the other country.... If the foreign city which he represented was in any way involved in legal proceedings, he introduced to the court the advocates, who had been dispatched to plead its cause. He was present, as a witness, at certain civil transactions of his proteges, and particularly at the making of their wills. He determined the succession of deceased foreigners, who died without heirs. He obtained security for the loans of the strangers under his protection, and even acted as a broker as between the merchants of the two States in question...’


34. The Frankish capitulary act of 768, for instance, stated: ‘All shall follow their own law, both Romans and Salians; and those who come from other regions shall live according to the law of their own country’. Quoted in Maurizio Lupoi, *The Origins of the European Legal Order.* (Cambridge University Press, 2007). 394-395. A detailed account of the different laws and institutions of the Middle Ages can be found in Simeon L. Guterman, *The Principle of the Personality of Law in the Germanic Kingdoms of Western Europe from the Fifth to the Eleventh Century.* (P. Lang, 1990); Robinson, Olivia F. T. David Fergus, and William M. Gordon, *European Legal History.* (Butterworths, 2000); Kim Keechang, *Aliens in Medieval Law: The Origins of Modern Citizenship.* (Cambridge University Press,


Chapter I – Definition and Early Origins of Extraterritorial Consular Jurisdiction


43. By reference to the Ottoman Empire, Augusti calls it the immiscibility of the alien doctrine: ‘Particularly in view of the Islamic doctrine of the immiscibility of Moslem and Christian communities and the radical divergence between the legal system of the Ottoman Empire and the Western Powers, it was considered to be the most natural and proper arrangement for foreigners in the Ottoman territories to be subject exclusively to the laws and jurisdiction of their own sovereigns, acting through their ministers and consuls.’ See Eliana Augusti, ‘From Capitulations to Unequal Treaties: The Matter of an Extraterritorial Jurisdiction in the Ottoman Empire’, Journal of Civil Law Studies 4 (2011): 294.