*British Extraterritoriality in Korea, 1884-1910*

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# The Treaty and extraterritoriality

The extraterritoriality provisions of the Treaty of Friendship and Commerce of November 26, 1883, between the United Kingdom and Korea constituted the theoretical high point of British nineteenth-century extraterritoriality. No other treaty set out extraterritorial rights in such detail, yet, for the first time, a Protocol also declared the basis upon which Britain would surrender extraterritoriality and, despite the Treaty’s attention to extraterritoriality, Britain’s actual exercise of extraterritoriality in Korea was almost as a ‘non-event’ — certainly when compared with China and Japan, and it left none of the lingering resentments found in those countries.

Fewer than ten cases came to court and barely a dozen further complaints were raised with the British authorities over the quarter century from 1884 to 1910. This compares with over 6,000 recorded cases in Japan and far more in China. No civil cases of any importance arose in Korea, and only four criminal cases of any seriousness — with two arising entirely from pressure by the Japanese residency-general to curb the pro- Korean independence activities of Thomas Bethell.

Japan had obtained extraterritorial rights in Korea in 1876. Britain’s first attempt, in 1882, by Admiral Willes, commander of Britain’s China Squadron, followed the United States’ treaty earlier that year that had been negotiated by Commodore Robert W. Shufeldt. Willes had been poorly prepared, took no account of wider geo-political issues and simply adopted the USA treaty’s terms. When Willes’s treaty became known, it was criticised for the high customs tariffs imposed by Korea on British trade, failing to allow Britons to travel and trade in the interior and

1 Matters referenced and cited in Christopher Roberts, *British Extraterritoriality in Korea 1884-1910: A Comparison with Japan* (Folkestone, Renaissance Books, 2021) are not further referenced and cited in this article.

not fully addressing extraterritoriality. As a result, his treaty was never ratified, and in 1883 Sir Harry Parkes, newly transferred from Japan to China as Minister, was instructed to negotiate a new treaty.

Much of the groundwork for the new treaty was laid over the spring and summer of 1883 by Parkes’s subordinate of many years in Japan, William George Aston, who had studied the Korean language and was well-known to many Korean high officials. Unlike Shufeldt and Willes, who had depended upon Chinese liaison and translation with Korean officials, Aston was able to prepare the ground in Seoul without Chinese interference.

Parkes and his party (which included Aston and Walter Caine Hillier, a junior assistant from the Chinese service) spent November 3 to 26 in Seoul to finalise the Treaty which the British Foreign Office said gave “entire satisfaction.” While saying little new conceptually, it dealt comprehensively with extraterritoriality. Articles III to VI detailed the position that then appertained (or, at least, Parkes’s view of what should appertain) in China and Japan and aimed to avoid contentious points that had arisen in Japan over the previous quarter century.

The Treaty’s fundamental principle was that jurisdiction over the persons and property of British subjects in Korea was vested exclusively in the British authorities, who were to hear all claims brought against British subjects — whether brought by another Briton, a Korean or another foreigner.

If the Korean authorities or a Korean subject made any charge or complaint against a Briton, the case was to be heard and decided by the British authorities, and British subjects who committed any offence in Korea were to be tried by the British authorities according to the laws of Great Britain and such other regulations as were agreed by the two countries’ authorities. In other words, Britons were only subject to local Korean laws and regulations if the British authorities had agreed beforehand to those laws and regulations.

Reciprocally, complaints by Britons against Koreans were matters for the Korean authorities. In all cases, a properly authorized official of the complainant’s nationality was allowed to attend the hearing; call, examine, and cross-examine witnesses; and protest against the proceedings or decision.

Any British goods seized by the Korean authorities at an open port could be detained by the Korean authorities until the British authorities made their decision. Any Briton attempting to smuggle goods into any port closed to foreign trade was to have such goods confiscated and forfeit twice their value. The Korean authorities could seize the goods and the

Briton concerned, but were to forward him immediately to the nearest British consul for trial.

If a Korean subject took refuge in British occupied premises or on board a British vessel, no Korean official could enter those premises or board the vessel without a British consul’s consent. In reverse, on demand by a consul, the Korean authorities would arrest and deliver up any British subject charged with a criminal offence and all deserters from British naval and merchant vessels.

Opium’s import into China had long been associated with treaty ports and extraterritoriality but the Treaty prohibited its import into Korea

— except for ‘medicinal’ opium which was specifically permitted.

Britain’s requirement for extraterritoriality stemmed from the desire to ensure that British subjects were not subject to a capricious or arbitrary criminal law system and could trade on a publicly available set of legal rules applied consistently and fairly by an independent judiciary. In a Protocol to the Treaty, Britain agreed to relinquish extraterritoriality when, in the British government’s judgement (a) Korean laws and legal procedures had been reformed so as to remove the objections which then existed to British subjects being placed under Korean jurisdiction, although what these objections were was left unstated, and (b) Korean judges had attained both the legal qualifications and an independent position similar to British judges. The first point reflected the USA treaty and the unratified Willes treaty but, unlike them, was drafted as a unilateral declaration by Britain — not a bilateral agreement — and gave greater leeway to Britain. The principle was not new, for during Japan’s Iwakura mission to London in 1871/72, Britain had confirmed that British policy was to yield jurisdiction over British subjects to Japan as soon as Japan had a proper code of laws administered by tribunals upon

which the British government could rely.

The reference to local judges having attained similar qualifications and independence to British judges was absent from the Willes treaty but was a key issue in the then ongoing discussions surrounding the abolition of extraterritoriality in Japan. Thus, its inclusion in the Protocol must have been as much with an eye to Britain’s restating its position vis à vis Japan as its position in Korea.

As foreshadowed by the Japanese and USA treaties, Article IV opened the ports of Chemulp’o, Wŏnsan and Pusan to British commerce and, following Korea’s similar agreement with China the previous year, British traders were allowed to establish themselves for trade and

residence at Seoul and Yanghwajin.2 At, and within 10 Korean *li* (about 25 miles) from, all these places, Britons could rent or purchase land or houses, and erect dwellings, warehouses and factories. Korea agreed to set aside, at each place, a suitable piece of ground as a foreign cemetery.

The Treaty also provided that British subjects could travel wherever they pleased in Korea without passports within up to 100 *li* from the treaty ports. Beyond that, they could travel for pleasure or trade under passports issued by the consuls and the Korean authorities. The restriction limiting travel beyond 100 *li* to pleasure or trade was absent from the 1886 Korea-France treaty whereupon Britain and the other treaty countries asserted that the restriction should no longer apply to their nationals. In practice, this restriction’s absence permitted missionary work in Korea’s interior.

In total, eleven countries negotiated treaties with Korea providing for extraterritoriality. These subsequent treaties followed, almost verbatim, the Treaty’s terms apart from the Chinese 1899 treaty which provided for reciprocal extraterritoriality.

# Structure of British extraterritoriality

With the Treaty’s ratification, the British authorities became responsible for the behaviour of Britons in Korea — but the British authorities had no legal basis for exercising jurisdiction over Britons in Korea until the necessary regulations were made under Britain’s Foreign Jurisdiction Act of 1843.

In 1865, Britain had put its exercise of extraterritoriality in China and Japan onto a comprehensive footing by an Order in Council3 which was extended to Korea in September 1884. It also became an offence for British subjects to deride publicly the established religion of Korea, make war against the king of Korea, or trade at unopen ports.

Each British consul in Korea was authorized to hold a court, formally called a Provincial Court (although most people continued to refer to them as consular courts). Unlike in Japan and most of China, where a consul’s jurisdiction was limited to his own consular district or province (i.e. the treaty port in which he was based), the consuls in Korea were appointed in respect of the whole country. Therefore, each had jurisdiction over all Britons in all of Korea.

2 Namp’o and Mokp’o were opened to trade in 1897, followed by Kunsan, Masan and Sŏngjin in 1899. Pyongyang was designated an additional trading market in 1898.

3 Essentially, an executive order or regulation.

Britain’s extraterritorial edifice in East Asia was run by government employees — principally members of the consular service. For all judicial matters, consuls were supervised by the Chief Justice (supported by an Assistant Judge) of Her Britannic Majesty’s Supreme Court for China and Japan based in Shanghai (restyled as Her Britannic Majesty’s Supreme Court for China and Corea after extraterritoriality ended in Japan in 1899).

The British minister to Korea was involved in only three aspects of the courts’ administration. First, if the circumstances of any criminal case made it “just or expedient,” the chief justice could recommend the minister to mitigate or remit the punishment imposed by the courts. Secondly, all death sentences were referred to the minister to decide whether to sanction them or to exercise his powers of pardon or commutation. These provisions proved redundant in Korea, for no death sentences were imposed and no other sentences were questioned. Thirdly, he retained executive power to make regulations “as seem fit for the peace, order and good Government of British Subjects … in …Korea and for the observance of the Treaty.” Only three such regulations were made: two very minor, technical ones in 1907 and 1909 and another, following the Bethell cases, in 1908 which sought to control British-owned newspapers in Korea.

# The consular establishment

The British government built up a cadre of linguistically trained consular officers for China and Japan but established no separate consular service for Korea — Korean posts being filled from China and Japan. Until 1905, consular appointments were initiated by the minister in Beijing and, thereafter, by the ambassador in Tokyo.

Until 1898 the ministers to Beijing also acted as non-resident ministers to Seoul. Then, Sir John Newell Jordan, who had been consul- general in Seoul since 1896, was accredited directly to the emperor of Korea as chargé d’affaires and, in November 1901, was upgraded to ministerial rank. Jordan was the only resident British minister to Korea, for — with the establishment of Japan’s protectorate in 1905 — Korea’s foreign relations were handled by Japan and the legation was reduced back to a consulate-general and Jordan left Seoul and was replaced by Henry Cockburn as consul-general reporting to the ambassador in Tokyo.

Parkes had envisaged a consular establishment consisting of a consul-general resident in Seoul and a vice-consul based at Chemulp’o. The vice-consul would try the minor criminal cases and summary civil

cases and hold coroner’s inquests, while all important cases, probate business and naval courts of enquiry would be handled by the consul- general. This work split became blurred over time as the caseload was so low.

The initial consular establishment consisted of Aston and William Richard Carles, who were appointed (provisionally) as the first British consul-general and vice-consul, respectively, to Korea. Neither was legally qualified, although Aston had 20 years of experience as a consul and had presided over courts in Japan. Despite consuls’ judicial responsibilities in Korea, only Henry Alfred Constant Bonar — at the end of the period — was legally qualified, though he never sat judicially in Korea.

Between Aston’s departure from Korea in October 1885 until Hillier became consul-general in May 1889, British consular representation in Korea was on an *ad hoc* basis with officials holding positions in an acting capacity, while the British government decided what level of representation it wanted in Korea. Cockburn was the last consular official in Korea appointed from the China consular service. After him, all appointments were from the Japan consular service.

Initially, there had been just one vice-consul to Korea — Carles

— but he was soon joined by Parker as a second vice-consul. However, after Carles left Korea, there was not another formally appointed vice- consul in Korea until Arthur Hyde Lay was appointed to Chemulp’o in 1902. Usually, two assistants were attached to the legation at any one time, the senior of whom would be appointed as acting vice-consul at Chemulp’o.

Until 1902, assistants all came from the China consular service, as a knowledge of Chinese was necessary, for most official correspondence with the Korean authorities was conducted in Chinese. Then, it was decided that the Japan consular service should supply the consular officer at Chemulp’o, although the senior assistant in Seoul still required a knowledge of Chinese. With the establishment of the Japanese protectorate, all correspondence came to be conducted in English or Japanese and the consular establishment in Korea was staffed wholly from Japan.

The chief justices had mostly been lawyers in private practice before appointment. None spoke Korean. The only known visit to Korea by a chief justice was in 1887 when he visited Seoul and Chemulp’o. It is not known if he conducted any court business in Korea or whether he came simply to familiarise himself with the likely workload.

The assistant judges all came from the China consular service

where they had qualified as barristers before specialising in legal and judicial matters. Of them, only Frederick Samuel Augustus Bourne had any dealings with Korea when, as acting judge, he came to Korea in 1908 to hear the second Bethell case. The prosecutor in this case was Crown Advocate Hiram Parkes Wilkinson who had been in Seoul in 1898 when he was appointed acting assistant judge to try O’Neil, the legation’s constable, for manslaughter.

Constables were a feature of the consular courts and consulates often had a British constable attached to them. Their principal function was to support the consul in maintaining order amongst Britons but they also acted as consular clerks — especially for secret or confidential documents — messengers, and court ushers, clerks and process servers.

As in England, criminal cases and inquests involved juries which were arbiters of fact. Only two juries were summoned in Korea: in the O’Neil case in 1898 and the inquest into Frederick Frank William Richmond’s death in 1899 when juries of five and three respectively were empanelled. Jury service was restricted to British males over 21 with an annual income exceeding $2504 capable of speaking and reading (but not, necessarily, writing) English. As the O’Neil case showed, it could be difficult to make up a jury given the low British population numbers and that clergymen and medical practitioners — several of whom were missionaries — could claim exemption from jury service.

Unlike in China and Japan, no independent British lawyers practised in Korea — there was insufficient work. The only independent lawyers recorded as appearing in Korea were Charles Neville Crosse, a barrister who had been based in Kobe since 1893, who defended Bethell in 1908, and A. P. Stokes, of Hong Kong and Shanghai, who in 1899 attended the deposition hearings of Jordan and Mrs Joly conducted before the Chemulp’o vice-consul for the purposes of the Joly case then ongoing in Shanghai.

The consuls held their courts in their private offices, although for the second Bethell case the former legation guards’ barracks were converted into a public courtroom. At both Supreme Court trials in Seoul, the judges and counsel would have been be-wigged, robed and gowned.

# Caseload

We find references to just eight criminal and 14 civil matters, one inquest

4 Mexican silver dollars (**$)** were a standard currency unit of account in East Asia but, from the late 1890s, Japanese yen (**¥)** came to be used in Korea.

and one naval court of enquiry: a total of 24 matters. Of these, barely a third reached the courts, for the majority of civil claims were resolved without court proceedings — reflecting the consuls’ duty to encourage the amicable settlement of claims — and half the criminal matters were handled informally or dropped.

Three principal reasons explain the small caseload in Korea: the almost complete absence of British flagged vessels from Korean waters; the small British population in Korea and its makeup; and the absence of any significant British trading presence.

Very few British flagged vessels called at Korean ports. The consuls’ 1889 annual Trade Report noted that “the red ensign… is … conspicuous only by its absence” as the Japanese had the lion’s share of the shipping trade. After a slight upwards blip during the 1894-95 Sino- Japanese War, there were only occasional references to British vessels visiting Korea in succeeding years and the 1901 *Directory* confirmed that the carrying trade was “practically in the hands of the Japanese.”

Only in the early 1900s do we find increased regular visits by British vessels to Korea. The 1907 Trade Report suggested that there had been an exceptional increase in British vessels calling at Korean ports during the 1904-05 Russo-Japanese War, and the 1907 number was even higher as vessels imported railway equipment from the USA and pipes to construct the Seoul waterworks. Even so, British vessels remained insignificant against nearly 5,000 Japanese vessels calling at Korean ports. Consular jurisdiction over shipping matters was distinct from extraterritoriality and arose from the British Merchant Shipping Act. Shipping offences were offences committed on board, or in relation to, a British flagged vessel. In numerical terms, they constituted the largest part of the courts’ caseload in Japan with over 1,900 cases over the 40-year period of British extraterritoriality, but no shipping offences were recorded in Korea. This near absence of British vessels from Korean waters

removed a whole swathe of potential court cases.

In Japan after 1879, 1,050 criminal cases came before the courts, of which 677 were shipping offences, leaving just 373 criminal offences committed onshore — and sailors were the defendants in 219 of these. Therefore, only 154 criminal cases after 1879 concerned British residents in Japan.

Reported civil claims against the resident British population in Japan dropped dramatically after 1883, with just 166 cases between 1883 and 1899. Shipping related disputes accounted for some 20 percent of claims and sailors constituted a significant proportion of the defendants in minor claims for goods and services. Accordingly, for comparison

purposes, we should reduce the post-1883 civil caseload in Japan to, say, just some 100 civil disputes affecting Britons living in Japan.

Thus, during the second half of the extraterritoriality period in Japan, the resident British population of some 1,000 faced just 154 prosecutions and some 100 civil cases. In Korea, the British population never exceeded 100, i.e. less than a tenth of that in Japan. It grew slowly from ten Britons in 1883 (most of whom were employed in the Korean Customs Service) through 51 in 1893 to 85 in 1908. Thus, based solely on population relativities, we would expect the caseload in Korea to be under a tenth of that in Japan — or fewer than 15 criminal and 10 civil matters over the entire period, as against the 24 matters in total that we actually find, of which only nine came to court.

Of the 85 Britons registered as living in Korea in 1908, 20 were children, 36 men and 29 women. Half the adults were engaged in missionary work, ten were artisans, electricians or engineers (working either in Seoul or various mines upcountry), four were employed by the British-owned Korean Waterworks Limited in Seoul, four were independent professionals, three or four were at the legation, one was employed by the Korean Customs and one was a journalist.

The British population in China and Japan — particularly in the seaports — was more mixed, with many viewed by officialdom as belonging to the ‘rowdy class.’ Looking at the Nagasaki and Osaka caseloads, we see the difference that population makeup had on a court’s caseload. In Nagasaki, where the British population hovered at just under 100 for most of the period — i.e. more than the British population in the whole of Korea at its height — 42 criminal prosecutions were brought against residents during the period 1881-99, (over four times the number in Korea), but Osaka, where most British residents were missionaries, had no cases.

The third factor is the absence of any significant British commercial and trading presence in Korea. Despite British goods forming the bulk of Korean imports through the 1880s and 1890s and still a significant proportion into the twentieth century, Japanese and Chinese trading ventures dominated trade in Korea. They trans-shipped British goods in Japan or China from British vessels into Japanese and Chinese vessels and, in the north of Korea, many Chinese small traders simply brought goods across the border.

Given this background, the courts’ low caseload in Korea is unsurprising. Finally, it appears that the consuls used their ‘good offices’ to settle many claims informally without recourse to the courts.

# Consuls’ powers

Consuls had no jurisdiction in admiralty, lunacy or matrimonial matters; such jurisdiction was reserved to the Supreme Court; but this lack of jurisdiction never caused any problems in Korea as no such cases ever arose.

Otherwise, proceedings in criminal and civil cases broadly followed the position in England. There were three gradations of a consul’s power to try cases — all linked to his sentencing powers or, in civil cases, the size of the claim. A consul sitting alone could impose a fine of $200 or sentences of three months’ imprisonment in criminal cases and could hear civil suits involving claims of up to $1,500. For most cases, the consuls’ jurisdiction and sentencing powers were adequate. The Supreme Court was the appellate body for all appeals from the courts in Korea. Only once was an appeal threatened from Korea — but the case settled before any appeal could be made.

Should the consuls’ powers prove adequate, the Supreme Court had a concurrent extraordinary jurisdiction to hear civil cases and, in the more serious criminal cases, jurisdiction was reserved exclusively to the Supreme Court. It was never called upon to hear any civil cases arising in Korea, although two cases closely connected with Korea were heard before the Supreme Court in Shanghai.5 The Supreme Court heard two criminal cases in Korea: the O’Neil case and the second Bethell case.

Few civil claims are recorded against British subjects in Korea and none between two British parties. Only two civil claims and two probate applications went to court. In addition, we have records of one naval court of enquiry and one coroner’s inquest. No women were prosecutrices or defendants in Korea — unlike China and Japan.

# Criminal cases

5 The *Joly case* in 1898 involved Mrs. Joly, the widow of Chemulp’o vice-consul Henry Bencraft Joly, seeking to enforce a claim under an insurance policy that her husband had taken out only a few months before he died in post. She was unsuccessful when a jury found that Joly had not answered truthfully the questions on the application form. In 1908, Bethell was awarded $3,000 damages after successfully suing the owners of the *North China Herald* and *North China Daily News* for defamation for repeating claims from Japanese newspapers that he had misappropriated monies intended for The Redemption Fund of the National Debt of Korea.

Just eight criminal matters involving British subjects as defendants in Korea are recorded — and only four came to court, two being tried by a consul and two by the Supreme Court*.* Nothing came of the first four recorded criminal complaints. The first, in June 1884, involved an accusation against a Briton in Busan of assault, but apart from Aston’s explaining that he saw need to intervene, no details are available. Until the 1884 Order in Council was in force, Aston had no powers to try the case

— let alone sentence or imprison anyone — so we must assume that he handled the matter informally.

In 1886, a British official on holiday in Korea from Madras claimed another Briton in Korea, Lascelles (also known as Lewis), was suspected of obtaining money under false pretences at Madras, Ceylon, Shanghai and Hong Kong and urged his prosecution. Lascelles denied the allegations but the complainant would not stay in Korea to prosecute him and was unable to produce much evidence to support his claims. So, perforce, the matter was dropped.

At the end of 1886, the legation’s newly appointed constable, Shaw, became engaged in a drunken brawl at Chemulp’o with an American sailor. To save everyone’s embarrassment, it seems the consul simply shipped Shaw to Shanghai on board a Royal Navy vessel rather than trying him.

In 1889, the Korean authorities accused Hagramarn, who lived in Russia’s northeastern territories, of illegally procuring timber and cattle in Korea and transporting them to Russia. Hagramarn denied all accusations and claimed that the local Korean prefect knew him personally and so ought to know that he had not passed through the district during the summer months, whereupon the Korean authorities dropped the matter.

Only in 1898 — some 15 years after the Treaty — do we find the first major criminal case when O’Neil, another newly appointed constable, was charged with manslaughter and causing the death of a Korean coolie, Yi Kyeng Jul, who worked under him in the legation grounds. On May 6, Jordan, who was in his office with his assistant, Herbert Allen Ottewill, and a Dr. Baldock, was called to see Yi, who claimed that O’Neil had beaten him. Jordan said that there was nothing noticeable about Yi’s appearance except that he looked thin and worn. After sending Yi home, Jordan interviewed O’Neil who denied that he had struck Yi. Four days later, Yi’s family brought him back to the legation in a dying condition, whereupon Jordan sent him to Seoul’s Nak Tong hospital, where Yi died shortly afterwards.

The Seoul police complained that Yi had died of head wounds received at O’Neil’s hands and alleged that O’Neil had told Yi that he was

not sweeping the ground well enough before kicking and hitting him, causing him serious wounds. The governor of Seoul requested Jordan to punish O’Neil and avenge the injury done to Yi’s family.

Jordan conducted a preliminary hearing on May 30 in the presence of the governor, who was given every facility to prosecute the case, and the deceased’s brother and other witnesses gave evidence. Dr. Baldock stated that Yi had been brought to the hospital dying as the result of injuries received some four days previously but that the manner of his death was not such as would be caused by injury to any thoracia or abdominal viscera and a superficial examination suggested that no ribs or other bones had been broken. Although Yi’s body was “much wasted and bore out the statement that no food had been taken since the alleged injury,” none of the injuries was enough to account for the death.

Although Jordan considered the evidence meagre and barely sufficient to make out a *prima facie* case, he committed O’Neil for trial before the Supreme Court. Meanwhile, he accepted bail from O’Neil for his appearance at trial. *The Independent*, a Korean-owned and -produced English-language newspaper, reported the preliminary hearing and assured its Korean readership, which had “manifested considerable anxiety” about the case, that it was receiving “due attention.”

Wilkinson, the crown advocate, was appointed acting assistant judge to travel from Shanghai to Seoul to hear the case, and he fixed the trial for July 7, 1898, at the legation. We know there was a full transcript of the trial because Wilkinson wrote that he was taking it back to Shanghai, but I have been unable to locate the transcript. So, we are left with just Wilkinson’s brief report to the chief justice and *The Independent*’s short report on the trial.

Summoning a jury proved troublesome. Eight people were summoned but this number included two clergymen and a medical practitioner who were all entitled to exemption from jury service and the two clergymen exercised this right. This left just six people from whom a jury of five needed to be empanelled. In the end, no potential juror was challenged, the medical practitioner was excused and the remaining five formed the jury.

The trial lasted from 9:30 am until 8 pm with Ottewill acting as prosecutor. The governor of Seoul attended and sat on the bench throughout with Wilkinson, but took no part in the proceedings except to suggest a few questions which were put to the witnesses. At the trial’s conclusion, the jury acquitted O’Neil. *The Independent* reported that “No pains were spared to get at the truth… and the witnesses, including the brother of the deceased, were subjected to the fairest and fullest

examination.”

Afterwards, Jordan reported to London that the Korean authorities had behaved with moderation and would not have pressed the charge had it not been for a series of similar recent incidents in Seoul which had attracted the attention of the local press, “of which the government stands in much dread.”

The day after O’Neil’s trial, Ko Jeiyong, a Korean who was well- known amongst the foreign residents, was brought to the legation bearing the marks of severe injuries and bruises which he alleged had been inflicted upon him by Busby, an employee of the Seoul/Chemulp’o railway. When brought before Jordan on July 9, Busby admitted assaulting Ko and Jordan sentenced him to three months’ imprisonment with hard labour.

The British authorities had constructed purpose-built lock-up facilities at Shanghai and Yokohama to hold prisoners sentenced to imprisonment by British courts in China and Japan while, elsewhere in East Asia, many British consulates had a consular facility under the consular constable’s supervision, but no similar arrangements existed in Korea. The only foreign prisons in Korea belonged to the Japanese and Chinese consuls but an early consul considered that, as the winters were so cold and disease so prevalent in summer, British subjects should not be confined there. Meanwhile, Korean prisons were viewed as comparable with the very worst prisons in Japan and China with torture prevalent. Only in 1897 was a modern Korean prison built in Seoul.

When Jordan sentenced Busby to imprisonment, he considered that to keep Busby in Korea would either endanger his life or facilitate his escape. Therefore, Jordan wished to transfer him to China for not to imprison him would result in “a serious miscarriage of justice”; but the chief justice explained that no power existed to effect such a transfer. We simply do not know where Busby served his sentence as the records provide no indication — perhaps he was kept confined within the legation in the care of the unsatisfactory O’Neil.

Deportations of Britons from Korea could be effected only with a warrant signed by the chief justice. There were no reported deportations from Korea, although the practical equivalent could be achieved, as in Shaw’s case, by simply shipping a miscreant away from Korea on an outbound vessel. While there is a reference to Carles having “summarily deported” a Briton in 1885, we have no further information as to who or why and, given the need for a warrant signed by the chief justice, talk of any “summary” deportation would seem exaggerated. Again, it probably refers to a case of persuading the miscreant to allow himself to be shipped out of Korea.

After the O’Neil case, no further criminal cases were recorded until the two Bethell cases in 1907 and 1908, both of which were motivated by political considerations and arose out of Bethell’s newspaper campaign against Japan’s growing control over Korea. Their rarity emphasises just how few criminal prosecutions occurred during British extraterritoriality and the second case was one of only two criminal trials before the Supreme Court in Korea — and the only one in which counsel appeared.

The story is remembered in Korea from an anti-Japanese perspective. Bethell had lived in Japan for 15 years before going to Korea in 1904 at age 34, as a war correspondent. He remained there and began publishing his own newspapers: the English language *The Korea Daily News*, the Korean language *Daehan Maeil Sinbo* which was published in a mixture of *hanja* and *hangŭl* (aimed at the Korean educated classes) and a separate edition published solely in *hangŭl* (aimed at the mass of the population). The newspapers became a thorn in the side of the residency- general which lobbied Britain to curtail Bethell and his perceived abuse of extraterritoriality to attack Japan’s policies in Korea. The Japanese government’s principal concern was with the *Daehan Maeil Sinbo* which reached the local population.

The British authorities were ready to help; it was all a question of procedure. The Treaty gave Bethell every right to carry on business in Korea and to publish his newspapers. Two provisions could be invoked. Article 83 of the 1904 Order in Council provided that, where there was reasonable ground to believe that Bethell was about to incite a breach of the public peace, the court could order him to give security not to do so and, if he failed to do so, could deport him. Alternatively, article 5 of the 1907 Order in Council made it an offence to publish a newspaper containing seditious matter. Besides imprisonment, a Briton guilty of breaching this could be deported. Jurisdiction was reserved exclusively to the Supreme Court. Seditious matter was matter calculated to excite disorder or enmity between British subjects and either the Korean government or the authorities or subjects of another power in amity with Britain.

The issue of foreign-owned press using extraterritoriality’s protection to publish articles considered by the local authorities to be unhelpful — or worse — was not unique to Korea; it arose also in China where the British minister to Beijing noted how “newspapers published under the protection of foreigners did much harm” before saying “among them, the Japanese were the worst.”

In October 1907, Cockburn decided, in view of the risk of a riot

during the Japanese crown prince’s forthcoming visit to Korea if Bethell published an inciting article, to summon Bethell to appear in court before him under article 83. At the hearing on October 14, Ernest Hamilton Holmes — a consular assistant — gave evidence that Bethell’s articles had caused, or were likely to cause, a breach of the peace. Bethell was unrepresented by counsel — he would not have had time to obtain counsel from either Japan or Shanghai. Somewhat predictably, Cockburn found that Bethell had published matter that was “likely to produce or excite a breach of the peace” and ordered him to put up a bond for £300 to assure his good behaviour for six months.

One cannot but question the fairness and equity of these proceedings. Bethell was issued with a summons just two days before the hearing — clearly insufficient time for him to instruct or consult a lawyer. Cockburn sat as the judge, his assistant, Holmes, was the formal complainant and, at Cockburn’s direction, had sworn the statement on which the court was to take action.

Bethell’s bond for his good behaviour expired on April 16, 1908, and in May the foreign office ordered Wilkinson to “proceed at once” from Shanghai to Seoul to advise on bringing proceedings against Bethell. Wilkinson advised a trial before the Supreme Court sitting in Seoul on a charge of breaching article 5. To save time and out of fairness to Bethell, Wilkinson informed Bethell informally of this and nature of the complaint. The trial opened on June 15 before Bourne, the acting chief justice,

in a temporary courtroom established in the barracks of the legation’s former guard. Wilkinson was seated at the counsels’ bench along with Miura Yagoro of the residency-general — who appeared in full uniform

— and Crosse, Bethell’s counsel. Many Koreans came daily to watch the proceedings.

Crosse and Wilkinson first clashed over whether the trial should be conducted before a jury. Bourne decided that, as article 5 reserved jurisdiction to the Supreme Court and “…it would be almost impossible in that small community to find sufficient persons to serve on a jury…,” he would proceed without a jury.

There were just two witnesses for the prosecution, both Japanese: Miura, and Hattori from the Bureau of Communications. Bethell was the first witness in his own defence. In essence, his defence was that nothing in the articles complained of had excited disorder. The first Korean witness was Yang Ki Tak, Bethell’s sub-editor. As the Korean courts had no form of oath, the first point to be discussed was the form of oath that Yang and the interpreter should take. Both being Christian, they kissed the Bible, before Yang and several other Korean witnesses said that they did not

consider Bethell’s newspapers to be calculated to incite disorder.

After a four-day trial, Bourne found Bethell guilty and sentenced him to three weeks imprisonment after which Bethell would be required to enter recognizances for his good behaviour for six months on penalty of being deported. By now, regulations had been made allowing the transfer of convicted Britons from Korea to China and Bethell served his sentence in the British prison in Shanghai. When his incarceration ended, he was ordered to give security to be of good behaviour for six months:

£200 from himself and £150 from another surety.

Disillusioned by the course of events, the role that he had been compelled to play, and out of sympathy with Japan’s interests in Korea, Cockburn left Korea in September 1908 for Britain on leave, before retiring from the consular service. Bethell died in May 1909 from heart failure and was buried in the foreigners’ Yanghwajin cemetery. Subsequently, Bonar, the new consul-general, mediated the sale of Bethell’s newspapers to the residency-general for ¥7,000 (£700).

# Civil claims

After an initial flurry as Korea opened up, civil claims tailed off to almost nothing. The first claim arose in 1884 before the Treaty had been ratified and involved a claim by a Japanese subject in Busan for ¥37 and 70 *sen* in respect of lodgings and goods sold on credit and provisions supplied to one Harrison. The Japanese consul at Busan had forwarded the claim to the British consul at Nagasaki — the nearest British consulate — but he had no jurisdiction in Korea. Parkes was loath to point out to the Japanese that, pending the Treaty’s ratification, Korean jurisdiction applied and suggested that, if the defendant were employed in the Korean Customs Service, the plaintiff should apply to the local commissioner for customs.

We know that another debt claim was brought successfully against one Thomas before Carles at Chemulp’o later that year because when Thomas absconded to avoid the judgement summons, Carles was compelled to ask the assistance of the Korean police to arrest him and to return him to Chemulp’o so that the judgement could be enforced. Clearly, the matter had been heard formally in court — otherwise no judgement summons would have been issued — but we know more about the arrest than the underlying claim as the Korean police, when they found Thomas, bound and beat him.

Also in 1884, a Korean merchant at Chemulp’o claimed for a cargo of silk and nankin goods lost on Jardine Matheson’s *Nanzing*. No court case was necessary as Matheson’s local agent agreed that if the

goods had, as stated, been lost then the claimant would be reimbursed after first producing an invoice showing the correct amount claimed and the amount of duty paid.

Six years passed before there was another civil suit. This was when the Korean authorities sued Alfred Burt Stripling for non-payment of ground rent due on his property in Chemulp’o. Stripling made various technical arguments as to why he was not obliged to pay the ground rent

* and Hillier told him informally that his arguments were frivolous. However, the Korean authorities’ petition was technically defective so their claim was dismissed whereupon they threatened to appeal to the Supreme Court only to drop the appeal when Stripling paid up.

This claim emphasized the indignity that extraterritoriality imposed upon the Korean authorities. Not only must they sue in a consular court for debts owed to them but any appeals were to be heard not in Korea but by the Supreme Court away in Shanghai.

Extraterritoriality’s key ingredients were exclusivity and a person’s nationality: only a British court could deal with a British subject

* likewise other countries with extraterritoriality and their own citizens. The exclusive nature of extraterritoriality created increasing practical problems for the international trading communities in China and Japan. Had the Western population in Korea been more numerous, more varied or more engaged in trade, it might well have caused similar problems in Korea. As it was, the vast bulk of foreigners were Japanese or, to a lesser extent, Chinese, and few cross-nationality issues or disputes involved British subjects in Korea.

A means of reducing potential arguments (with Korean and other authorities) was the requirement that all adult British subjects in Korea register with the consulates annually in January. The registration fee was

$5, with artisans paying a reduced rate of $1 until 1894 when a single fee of $2 was introduced. The British communities in East Asia regarded such fees as an outrage and registration was honoured as much in the breach as in the observance, but in Korea — unlike elsewhere — the British authorities took no action against non-registrants.

Two cases involving one U. H. Emberley show that many complaints could be settled informally and without recourse to courts. The first also highlights extraterritoriality’s exclusive nature. In 1899, the Korean authorities requested Jordan to order Emberley to return the premises he used as newspaper offices. When Jordan met Emberley to enquire into the matter, Emberley said he had acquired the premises from Philip Jaisohn (Soh Jaipil), the newspaper’s Korean American previous owner who, in turn, had been granted them by the Korean king. Jordan

explained that, as the title derived through an American citizen, the matter was one to be addressed between the Korean and American authorities. However, he assured the Korean authorities that Emberley would abide by whatever decision was reached.

In 1903, Chong Ming-sok, a member of the Law Revision Committee in Korea’s law ministry, complained about building alterations made at Station Hotel, near Seodaemun Station, which was tenanted and managed by Emberley. Chong claimed Emberley was encroaching upon his land and had violated his privacy by opening three windows in a side wall of the hotel that looked directly into his house. Jordan asked Emberley for an explanation. Emberley rejected both claims whereupon Jordan and the governor of Seoul met Chong and Emberley at the hotel to resolve the complaints. All parties agreed amicably that Emberley would block up the windows and Chong dropped his encroachment claim.

In March 1900, the Korean authorities presented Jordan with a claim against one John O’Shea in respect of monies owed to his local staff on a newspaper that O’Shea was trying to establish but, as O’Shea had already left Korea, Jordan was unable to do anything.

Following the death of William Du Flon Hutchison, a professor at Seoul’s English school, in 1901, a Korean claimed to have lent Hutchison some furniture and asked for it to be returned. As there is no further reference to the matter, we must assume that it was resolved to all parties’ satisfaction. In 1909, in response to a request from the residency-general, vice-consul Lay stated that the courts had heard no civil cases the year before in 1908, although the consulates had used their good offices in at least two cases — but without giving details of such interventions.

Consuls, like coroners back in Britain, could hold inquests — with a jury of three members — into unexplained British deaths in Korea. The only reported inquest was that of Richmond who died in Chemulp’o in 1899. Richmond was born in Montreal and came from Japan to Korea as a tide-waiter with the Korean Customs Service. He had only been in Korea for three months when his body was discovered, in highly suspicious circumstances, in the Japanese concession. Herbert Goffe, the acting vice- consul in Chemulp’o, summoned a jury and held an inquest the next day. An autopsy suggested that Richmond’s wounds were not the cause of death and that he had died from brain concussion as a result of a fall but the jury considered the doctor’s evidence to be weak and that the wounds were self-inflicted. They held that the concussion was caused by Richmond’s falling down whilst under the influence of alcohol. Despite the many suspicious issues surrounding the case, Goffe told Jordan that he could not see what else the jury could have decided.

The courts’ probate jurisdiction was restricted to uncontested applications — with contested cases reserved to the Supreme Court. Again, this proved adequate in Korea as there were no contested cases. We have references to just two probates having been granted in court proceedings; otherwise, deceaseds’ affairs appear to have been handled informally.

# Naval courts of enquiry

Naval courts of enquiry were a major feature of the British judicial scene elsewhere but they played little or no part in Korea. Despite their name and being operated by consuls in a formal setting, they were neither courts nor a by-product of extraterritoriality but administrative bodies established by, and reporting to, the British Board of Trade. Each was convened *ad hoc* whenever a British vessel was lost or otherwise ‘whenever desirable’ and consisted of three to five members including a naval and a consular officer plus a master of a British vessel.

Korea saw only one naval court: in 1884, to investigate the *Zephyr*’s loss on the Han River near Chemulp’o. The *Zephyr*’s master and the Korean pilot both gave evidence that the river’s navigation was by no means safe. The master’s insistence upon proceeding up-river despite the pilot’s wanting him to anchor was exacerbated by their inability to communicate except through sign language.

# The end of extraterritoriality

Japan took nearly 30 years to abolish extraterritoriality after Iwakura first raised the issue during his 1871–73 mission to America and Europe, and it took until 1943 before Britain and the USA relinquished extraterritoriality in China. But in Korea, everything followed from the single step of Japan’s annexation of Korea in August 1910. As Korea became Japanese territory, British extraterritoriality in Korea lapsed automatically because Britain had already relinquished extraterritoriality in Japan.

In Japan, following so much wrangling, the end of extraterritoriality was seen as a major event, by both the Japanese and the foreign community. Extraterritoriality’s ending in Korea could not have been more different. Whereas the British community in Japan had felt a degree of apprehension at extraterritoriality’s end — misplaced as it transpired, as the ending of extraterritoriality in Korea was a non-event, so far as both the British government and the British community in Korea were concerned. The British court in Japan had been packed with lawyers

and members of the public for its last formal sitting, but no equivalent event occurred in Korea. The whole background was completely different: whereas Japan was asserting its independence against the Western powers, Korea was being swallowed up by Japan.

The Corea Order in Council, 1911 gave formal effect to Britain’s cessation of extraterritorial jurisdiction in Korea and removed reference to Korea in the Supreme Court’s name which now became simply Her Britannic Majesty’s Supreme Court for China.

# British claims against Koreans

Britons’ claims against Koreans were not matters of extraterritoriality for they remained subject to Korean jurisdiction and were to be determined by the Korean authorities. ‘Making the system work’ required good relations between consuls and the Korean authorities; without it, British claims against Koreans could not be pursued effectively. British complaints about actions by Koreans fell into four broad categories:

1. assaults or other criminal acts;
2. debt claims;
3. disputes in relation to mining and forestry concessions and their working; and
4. general protection and enforcement of Britons’ Treaty rights.

The vast majority of complaints resulted in no formal case and, in all instances, the consuls’ role can best be described as the general exercise of protective rights and support that is part and parcel of a consul’s work.

# Protection of Chinese interests, 1894–99

Neither Britain nor the other Western powers claimed any general right to exercise protective rights or jurisdiction in relation to citizens of a country without a treaty with Korea, but at China’s request, Britain exercised protective rights over Chinese subjects in Korea for five years following the outbreak of the 1894-95 Sino-Japanese war, until China and Korea ratified a new treaty providing for China’s recognition of Korea’s independence and reciprocal extraterritorial rights.

During this period, the consuls tried cases brought against Chinese subjects. We have no detailed records of the cases nor any indication that the consuls applied anything other than English law. It was no small task as there were far more Chinese than British subjects in Korea and the consuls were engaged as much in protecting Chinese interests as in protecting British interests.

The Japanese, who wished to eradicate competition from Chinese traders and expel all Chinese from Korea, pushed the Korean authorities frequently to adopt the position that Britain had been merely asked by the Chinese government to protect Chinese subjects but, as China’s treaty with Korea had lapsed, Chinese subjects in Korea were subject to Korean jurisdiction and British consuls had no judicial powers over them. Jordan protested against this and told the Korean foreign affairs minister that “as you yourself admit, Chinese subjects committing any offence in Korea have, since they came under British protection, been invariably dealt with under [the Treaty].” Even the Japanese authorities had recognised this “despite recent attempts to disagree” and had applied frequently to British consular representatives for redress when Japanese subjects had complaints against Chinese subjects.

Britain’s protection of Chinese subjects in Korea was not entirely disinterested for, as Jordan reported in 1897, “there are some 3,000 Chinese in Korea whose interests as distributors of British imports are practically identical with our own. Their presence both here [Seoul] and at Chemulp’o is the object of constant attack — the Japanese and others regard with extreme jealousy the enjoyment by the Chinese of extraterritorial privileges in the country.”

# Protection of Italian interests

After Italy signed its treaty with Korea in 1884, it asked Britain, in the absence of a resident Italian consular presence, to protect Italian subjects’ interests in Korea. Britain did so until October 1901 when Italy established a consulate in Seoul and again after the establishment of Japan’s protectorate, when Italy ceased to maintain a permanent establishment in Korea. When hearing cases against Italians, the British consuls, notionally, sat in Italian courts and applied Italian law. Only four instances of issues arising involving an Italian subject are recorded — two criminal matters and two civil matters.

# Koreans seeking British protection

Nothing in the Treaty gave Britain any right to protect Korean subjects against their own authorities — quite the reverse. The nearest the Treaty came to this was article III(9) which provided that, without first obtaining a consul’s permission, Korean authorities could not enter British-owned premises or vessels to arrest any Korean subjects. This was intended to protect British-owned property and ships from unwarranted interference

by Korean authorities, not to protect Koreans.

In practice, this gave Koreans on British premises or vessels a limited quasi-protection. Opium smoking was one area where Koreans could benefit from this quasi-sanctuary. In 1891 and again in 1895, Korean authorities issued a general circular to foreign officials complaining about Koreans smoking opium on foreigners’ premises and requested Hillier allow Korean police to arrest Koreans found smoking opium on British premises. Hillier responded that it was his duty to see that the Treaty’s provisions observed but assured the Korean authorities that, if they brought to his attention to any specific instance of opium smoking by Koreans on British-owned premises, he would deal with the matter.

While opium abuse by Koreans may have occurred, it is not clear whether the complaints were directed more at British subjects or other foreign-run opium dens. There are no references in the correspondence files to any action being taken on this question against a British subject — or a Chinese or Italian subject under British protection — and the communication may have been just a general circular. Given the British population’s makeup and that, unlike in China and Japan, no Britons ran drinking bars, it would be somewhat surprising if Britons had provided cover to Koreans for this activity.

When Korean authorities claimed in 1899 that two Koreans had escaped from a local prison and taken refuge in premises owned by Emberley and Albert Kenmure, a British missionary in Korea, Jordan issued a warrant for their arrest and removal from the premises but, after a thorough search of the premises, they were not found.

The Bethell story provides two examples of article III(9)’s application. In May 1908, the Seoul police (effectively under Japanese control) entered Bethell’s premises and seized all copies of one issue of his *Daehan Maeil Sinbo*. This was a clear breach of the Treaty and Cockburn protested to the residency-general, which assured him that there would be no repeat and dismissed the Japanese superintendent of the Seoul police who had authorized the raid.

A month after Bethell’s second trial, the Japanese authorities tricked Yang, the Korean sub-editor who had given evidence for Bethell, to leave the newspaper’s premises whereupon they arrested him on a charge of embezzling funds subscribed by Koreans for the Redemption Fund of the National Debt of Korea. Of course, whilst Yang was on the premises, he could not have been arrested without Cockburn’s permission. Cockburn protested strongly to the Japanese authorities.

A month later, Yang was mistakenly released from prison and, now in a very frail condition, fled back to the newspaper offices. The

Japanese authorities demanded his rendition but Cockburn delayed consenting to his arrest until ordered by the British government to do so on the understanding that Yang was hospitalised and his trial would take place only when his health had been restored.6

Other cases where British consular authorities became involved on behalf of Koreans were not so much an attempt to exercise extraterritorial or protective rights over Koreans but instances of common humanity, as when Aston intervened in 1884 to protect Korean coolies who were unloading a British vessel at Busan from interference by local Japanese. When the British occupied Komundo in 1885, the local headmen sought British protection to avoid paying land taxes to the Korean authorities, but the consular assistant told them that Britain could not provide such protection and they must pay Korean land taxes.

Many Korean Christians sought the indirect protection of individual Westerners, their extraterritoriality and the general protection of their consuls and diplomats. This was not a case of the Treaty’s protective rights being thrown around the Korean Christians, but more a case of Korean Christians seeking the protection of the missionaries’ exercise of political influence.

# Conclusion

A study of British extraterritoriality in Korea shows how Parkes and Aston, when negotiating the Treaty and preparing the groundwork for British consular representation and judicial activity in Korea, were conditioned by their experiences in Japan — hence Parkes’s attention to the extraterritorial provisions of the Treaty and his laying much stress on the judicial structure in his early memoranda to Aston, and both expressing a wish for British prison facilities in Korea. Of course, it turned out that prison facilities were hardly needed in Korea and naval courts were, with one exception, non-existent.

The low case numbers in Korea are easily explained by the absence of a substantial merchant navy presence, the much smaller British population in Korea and its makeup, and the general absence of British traders in Korea. One consequence of the low caseload was the absence of a flourishing foreign bar in Korea so that Britons looked to lawyers from Japan and Shanghai for advice.

Several commentators have highlighted the consuls’ lack of legal

6 After a trial lasting several days, Yang was acquitted when the prosecution conceded that it could not prove his involvement in any misappropriation.

training as a problem in China and Japan — although it could be overstated

— but in Korea, the courts’ caseload was so small that this was hardly an issue and there was no need for any consular staff to focus solely upon judicial matters. On the whole, most civil disputes were amenable to the use of the consuls’ ‘good offices’ and appear to have been mediated in a manner acceptable to all parties without recourse to legal proceedings. The only two serious criminal cases were both heard by the Supreme Court. Otherwise, the consuls dealt with the few criminal matters without substantial complaint — although when Cockburn tried the first Bethell case in 1907, his handling of the case was criticized by the press, which noted his lack of judicial experience.

It has been argued that consular courts’ verdicts and sentences in China were strongly contingent upon the races of the perpetrator and the victim and that they “functioned to augment existing racial prejudices.” No one who has read British official correspondence in Korea can doubt that the officials often found dealing with Korean officialdom to be an exercise in frustration but, despite this, there is nothing to suggest any anti- Korean or pro-British bias in their or the courts’ handling of Korean claims against Britons or any unwillingness to follow up complaints against Britons in Korea. Similarly, when Britain protected Chinese and Italian interests in Korea, there is no evidence that British officials or the courts acted otherwise than with impartiality between the parties.

British extraterritoriality in China and Japan and the ‘unfair’ treaties are viewed as a blot on historical relations but it hardly features in the history of Anglo-Korean relations. Britain was only ever an insignificant player at a time when Korea was riven by internal divisions and too weak to stand up for itself against the competing interests of its nearest neighbours: China, Japan and Russia. Physical remains of treaty port life and British extraterritoriality in Korea are few: foreigners’ burial plots remain in Chemulp’o and Seoul but no consular building remains -

- although the British Embassy in Seoul still occupies the site of the old Legation where the two Supreme Court cases were heard.

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