THE UNITED STATES COURT FOR CHINA

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FEDERAL PRISONER Gerald E. Casement should have been a good candidate for a writ of habeas corpus. Imprisoned for the crime of murder, he had been found guilty by a judge, not a jury of his peers.[1] Yet on appeal the United States Court of Appeals for the Ninth Circuit denied this apparently worthy petitioner relief. Why? Because his appeal arose from the United States Court for China. And in China, the Constitution did not apply – even in its "American" court.[2]

That is just one of the peculiarities of the United States Court for China – a court Congress created like many other federal courts, but with jurisdic-

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[1] *See* U.S. Const. amend. VI.

[2] *See Casement v. Squier*, 138 F.2d 909, 909-10 (9th Cir. 1943) (citing *In re Ross*, 140 U.S. 453 (1890)). *In re Ross*, a case arising from the consular courts of Japan, held that the United States Constitution did not apply extraterritorially. Distinguished by *Balzac v. Porto Rico*, 248 U.S. 298 (1922), and then all-but abrogated by *Reid v. Covert*, 354 U.S. 1 (1957), *Ross* is no longer considered good law, although extraterritorial application of the Constitution still raises difficult questions. *See*, *e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 760-62 (2008) (discussing *Ross* and *Reid* in the context of Guantanamo Bay and the right to a writ of habeas corpus); *USAID v. All. For Open Soc'y Int'l, Inc.*, 140 S. Ct. 2082 (2020) ("[I]t is long settled as a matter of American constitutional law that foreign citizens outside U.S. territory do not possess rights under the U. S. Constitution."). *See also Hernandez v. Mesa*, 137 S. Ct. 2003 (2019) (holding the Fourth Amendment does not apply extraterritorially to non-Americans).

tion and a docket in some ways like a state court's – a state larger than any in the union, and by some measures, larger than the entire United States. That Chinese-American court, unique in concept and execution, is perhaps our nation's oddest judicial relic. Created in the twilight years of Qing Empress Cixi's reign in 1906 and lasting until the Japanese occupation of Shanghai in 1943, the U.S. Court for China was neither an Article I nor Article III court. Instead, authority for its existence rested on long-standing Sino-American treaties.[3] Yet the U.S. Court for China adjudicated thousands of cases, some of great commercial import. And the court's judges were equally colorful; they rode circuit throughout China, frequently returned to the United States to quash scurrilous rumors of corruption (often planted by the caustic members of the court's Far Eastern American Bar Association), and created a body of law unlike any other in the country.

But the U.S. Court for China is not merely a matter of abstract history. Some of the lessons drawn from this distant court illuminate the legal relationship between China and the United States today.

I.
HISTORY OF THE AMERICAN COURT FOR CHINA

While the U.S. Court for China was officially established in 1906, the United States' extraterritorial presence in the country preceded the court's establishment by more than 60 years. Long before the United States established a formal presence there, extraterritorial courts operated in China. Since 1689, countries had entered into extraterritorial treaties with China to secure their citizens' rights there.[4] So did the United States,

[3] An Act Creating a United States Court for China and Prescribing the Jurisdiction Thereof, Pub. L. No. 59-408, 34 Stat. 814-16 (1906).

[4] F.E. Hinckley, *Extraterritoriality in China*, 39 ANNALS AM. ACAD. POL. & SOC. SCI. 97, 97 (1912). Mr. Hinckley also served as the District Attorney for the United States Court for China – and was therefore chief prosecutor for the United States during his tenure.

According to at least one U.S. official stationed in Shanghai, the United States was unusually zealous among foreign nations in prosecuting criminal behavior by its citizens in China. Those eventually convicted were "retired home to McNeil's Island [Prison] in the state of Washington, or some other prison to which the United States Court for China was authorized to commit Americans convicted of crime." NORWOOD F. ALLMAN, SHANGHAI LAWYER 99 (1943).

whose first exercise of extraterritoriality in China came through the 1844 Treaty of Wanghia.[5] President John Tyler sent future-Attorney General Caleb Cushing to negotiate that treaty with China after its defeat by England in the first Opium War. That treaty marked the formalization of relations between the young democratic United States and the mature Qing dynasty, and formed the basis for Sino-United States relations for the next century. Importantly, the treaty incorporated the principle of extraterritoriality,[6] which ensured that American law would govern the rights and responsibilities of Americans in China.[7]

Why was the extraterritoriality provision so important? Because of perceived deficiencies in the Chinese legal system, apparently placed there by design. As Major Hubert D. Hoover luridly explained, the "great K'ang Shi, Manchu Emperor under whose beneficent rule the empire flourished for sixty years" viewed the domestic legal system with a jaundiced eye in the early 18th century. "The Emperor is of the opinion that lawsuits would tend to increase to a frightful extent, if people were not afraid of the courts, and if they felt confident of always finding in them ready and perfect justice." The Emperor decided "therefore that those who have recourse to the courts be treated without any pity, and in such manner that they shall be disgusted with law, and tremble to appear before judges." Hoover conceded that this explanation may have been apocryphal, a "curiosity to the modern legalist, but not without its pearls."[8] Even if so, Hoover's view reflected the era's prevailing wisdom: that the inadequacies of the Chinese legal system meant that it failed to ensure proper respect for Americans' rights.

So the United States insisted on extraterritoriality provisions in its treaties with China. The U.S. Court for China was not the first attempt to apply U.S. law to U.S. citizens in China. Initially, the United States set up a system of consular courts, largely run through the State Department, to adjudicate

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[5] Treaty of Wanghia, U.S.-China, Apr. 18, 1846, 8 Stat. 592.

[6] *Schooner Exch. v. McFaddon*, 7 Cranch 116, 127 (1812).

[7] Treaty of Wanghia, art. XXI (detailing treatment of United States citizen criminals); art. XXV (detailing jurisdiction of property disputes); art. XXVI (detailing jurisdiction of merchant disputes); later revised in the Treaty of Tientsin, U.S.-China, Jan. 26, 1860, 12 Stat. 1023; and again in the Treaty of Peking, U.S.-China, Oct. 5, 1881, 22 Stat. 828.

[8] Hubert D. Hoover, *Extraterritoriality in China*, 13 ST. B. J. 5, 7 (1938). Hoover served as Staff Judge Advocate of the U.S. Army, stationed in Tientsin, from 1934 to 1936.

the rights of U.S. citizens in China. Many of the consuls-general, commissioners, and other state department functionaries who operated those courts had no training in the law. And so those early consular courts likely met Emperor K'ang Shi's requirements of an ideal legal system: they provoked fear in the parties that appeared before them.[9] The continued failures of those consular courts led to an escalating sense of frustration from the American interests doing ever more business in China.

The consular courts' deficiencies quickly became apparent. President Grover Cleveland's first annual message called for the system's reorganization.[10] By President Theodore Roosevelt's tenure, the consular courts were overdue for an update. The Emperor of China issued an edict in 1905 targeting extraterritorial courts by banning certain punishments in Shanghai – and indicating that he might expand those restrictions to consular courts. At the same time, unrest among the irascible expatriate American lawyers in Shanghai led some of them to accuse the American Consul-General of performing his legal duties corruptly. Soon enough, President Roosevelt asked Congress to establish a district court to cover China and Korea. With strong backing from the State Department, the process of reforming the American legal system in China began in earnest. So earnestly, in fact, that in the "lightning speed" to carry out Roosevelt's request, Congress failed to identify whether Article I, Article II, or Article III of the Constitution gave it the power to create the new court.[11]

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[9] The legal reputation of the pre-Court for China consuls left much to be desired, even among Americans. "One particularly notorious American consul in fact prided himself on being 'short on law' but 'hell on equity.'" Teemu Ruskola, *Colonialism Without Colonies: On the Extra Territorial Jurisprudence of the U.S. Court for China*, 71 LAW & CONTEMP. PROBS. 217, 219 (2008)

[10] "I deem it expedient that a well devised measure for the reorganization of the extraterritorial courts in Oriental countries should replace the present system, which labors under the disadvantage of combining judicial and executive functions in the same office." JAMES D. RICHARDSON, *Grover Cleveland – March 4, 1885 to 1889, in* COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS 4923 (1897) (first annual message to Congress). Following President Cleveland's call to action, Secretary of State James G. Blaine tried to establish a federal court in Shanghai in 1891, but bills introduced to create the court in 1882 and 1884 failed. *See* Crawford M. Bishop, *American Extraterritorial Jurisdiction in China*, 20 AM. J. INT'L L. 281, 284 (1926).

[11] *See* An Act Creating a United States Court for China and Prescribing the Jurisdiction Thereof, *supra* note 3. On the confused and hurried process that led to adoption of the

II.
THE JUDGES OF THE AMERICAN COURT FOR CHINA

Following the reform of the ineffective consular court system, there remained the question of who should serve as judge on the new court. During its 40-year history, the U.S. Court for China had five judges, each Senate-confirmed for a ten-year term. Each judge cut an interesting figure and served during interesting times. Influential lawyers in China and the Far Eastern American Bar Association, and political enemies back in Washington, DC, frequently created problems for the judges; only two completed their terms.

Shortly after Lebbeus R. Wilfley was appointed the first judge of the Court for China, *The Cosmopolitan* described him as "The Most Hated American in China."[12] Before his appointment, Wilfley spent five years as Attorney General of the Philippines for Governor-General (and future President) William Howard Taft. Almost immediately, Wilfley incensed the expatriate American legal community in China by instituting a mandatory bar to practice law in his court and, a greater sin to many others, by closing the popular American brothels. When some of the established lawyers who predated Wilfley's arrival in China failed his bar exam, and thus could no longer practice law, trouble quickly followed.

The controversy escalated to calls for impeachment. Leading that charge was Shanghai lawyer and former Hawaii Attorney General Lorrin Andrews, who traveled with his complaints to Washington to lobby Congress to impeach Wilfley. Andrews, with letters from many of Shanghai's wealthy American businessmen and Shanghai-based journalists, accused Wilfley of anti-Catholic bias, incompetence, and recklessness.[13] But President Roosevelt supported him, and the House Committee on the Judiciary recommended against impeachment, so Wilfley survived the attempted ouster.

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statute, *see* Tahirih V. Lee, *The United States Court for China: A Triumph of Local Law*, 52 BUFF. L. REV. 923, 937-39 (2004).

[12] Robert H. Murray, *The Most Hated American in China*, THE COSMOPOLITAN (Oct. 1908), 496-504. *The Cosmopolitan* is still printed today, colloquially referred to as "*Cosmo*." Wilfley's brother Xenophon later served as a U.S. Senator in Missouri.

[13] *Seeks to Impeach Our Judge in China*, N.Y. TIMES, Nov. 10, 1907, at 3.

The public battle took a lot out of him, and in the wake of his exoneration, Wilfley resigned only two years into his term.[14]

The next judge was Rufus Thayer. Prior to becoming judge for the U.S. Court for China, Thayer was an assistant librarian at the Library of Congress and a Treasury Department bureaucrat. While working at Treasury, Thayer attended Columbia Law School's night program. Four years into his tenure, Judge Thayer returned to the United States claiming ill-health. Conveniently, his return occurred just as his domestic American antagonists attempted to open an investigation into his behavior. Beset by claims of impropriety – the House Committee on State Department Expenditures was investigating his irregular expenses and Americans in China accused him of taking unexplained breaks from hearing cases while pretrial detainees sat in jail awaiting their trials – Thayer resigned before the Committee published any findings, likely avoiding possible charges.[15]

The third judge, Charles S. Lobingier, was the first to serve his full ten-year term. Early in his career, he served on the Nebraska Supreme Court Commission of 1902 – tasked with ameliorating that court's prodigious backlog. President Roosevelt then appointed him to serve as a judge in the Philippines, where he chaired the commission that codified the protectorate's laws in 1907. President Woodrow Wilson then appointed him to the U.S. Court for China in 1914. When Lobingier came to China in the court's eighth year, there had been 375 lawsuits filed in the jurisdiction. Over the following eight years, that number rose to over 2,400. An academic, Lobingier explored the limits of the court's jurisdiction and began publishing the court's decisions in the "Extraterritorial Cases" reporter.[16]

Despite Lobingier's clear dedication to the law, and his dedication to defining the powers of the U.S. Court for China, he too was accused of impropriety. After he issued a judgment convicting William S. Fleming of contempt – a charge the Ninth Circuit affirmed – Fleming instigated a State

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[14] *New York Wilfley's Home. Ex-Judge at Shanghai Says Rogues Will Still Be Punished*, N.Y. TIMES, Jan. 11, 1909, at 6.

[15] Lee, *supra* note 11, at 950-51.

[16] *Judge Charles S. Lobingier*, 26 GREEN BAG 343, 343 (1914); Charles Sumner Lobingier, *Twenty Years in the Judiciary*, FAR EASTERN AMER. BAR ASSOC. 1-2, 4-5, 8-10 (1922).

Department investigation of Lobingier.[17] Unlike his predecessors, Lobingier both survived the accusations *and* finished the remainder of his term.

After Lobingier came Milton Purdy. Before becoming a judge on the U.S. Court for China, Purdy was a U.S. Attorney in Minnesota and then President Roosevelt's "chief trust buster" under Attorney General Philander Knox. An ardent member of the Progressive party, Purdy was recess-appointed to the U.S. District Court for the District of Minnesota by Presidents Roosevelt and Taft, but the Senate never confirmed him. He returned to the Department of Justice under President Warren Harding before President Calvin Coolidge appointed him to the U.S. Court for China.[18] While Purdy never got the life tenure of a district court judge in Minnesota, he did complete his ten-year term in China.

Milton J. Helmick, the former Attorney General of New Mexico and a former Albuquerque judge, succeeded Purdy and was the last judge for the U.S. Court for China. Helmick was still serving as a judge when the Japanese captured Shanghai. The Japanese army held Helmick in a hotel with the court's staff for six months before allowing him, and the staff, to depart China on the neutral Swedish vessel, the *MS Gripsholm*.[19]

Helmick's capture and repatriation to the U.S. did not end the U.S. Court for China, though. The final trial of the court occurred before former Oklahoma judge and active-duty Brigadier General Bertrand E. Johnson, who served as "special judge" for the Court for China and convicted Flying Tigers airman Boatner Carney of manslaughter.[20] With that, the era of American extraterritoriality in China came to a close.

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[17] Lee, *supra* note 11, at 951. It is also worth noting that much of the research for this paper is possible solely due to the work of Judge Lobingier. Despite the admonitions of Congress not to publish cases, and its declination to provide funds to do so, Lobingier produced the first (and authoritative) reports of decisions of the U.S. Court for China. Charles Sumner Lobingier, *Extraterritorial Cases Including the Decisions of the United States Court for China from its Beginning, Those Reviewing the Same by the Court of Appeals and the Leading Cases Decided by Other Courts on Questions of Extraterritoriality* [hereinafter "Extraterritorial Cases"] (1920-28).

[18] *Milton Purdy Dies; 'Trust Buster,' 70*, N.Y. TIMES, Feb. 14, 1937, at 49.

[19] *Gripsholm Brings 1,500 from Orient*, N.Y. TIMES, Aug. 26, 1942, at 7.

[20] Bill Lascher, *Until WWII, Americans in China had Their Own Special Expat Courts*, ATLAS OBSCURA, Nov. 11, 2015, www.atlasobscura.com/articles/until-wwii-americans-in-china-had-their-own-special-expat-courts. President Franklin Roosevelt pardoned Carney less than six months later.

Of the five judges of the court, the first three defined the jurisdiction of the Court for China, and they did so capaciously. As will be explained in further detail, Wilfley held that one could be legally domiciled in China[21] and later defined the scope of the "laws of the United States" applicable in the jurisdiction.[22] Thayer held that his China Court Regulations continued to operate despite contrary acts of Congress.[23] And Lobingier dramatically expanded the jurisdiction over the non-typically-federal aspects of the court, making the court in China more akin to a far-away state court than to a federal district court.[24]

III.
THE LAWS OF THE COURT FOR CHINA

The legal mélange used by the U.S. Court for China was unlike the mix of law and procedure used by any other United States court. Like all federal courts, the U.S. Court for China had a limited jurisdiction – but with the primary limitation being its focus on American nationality rather than on the substance of a given case. The court, which usually sat in Shanghai but also rode circuit to Canton, Tientsin, and Hankow, had jurisdiction over any criminal or civil case involving American citizens, non-citizen U.S. nationals (such as residents of Guam and the Philippines), and American corporate defendants.

But that appeared to be the *only* jurisdictional limit. While the Ninth Circuit assumed "without deciding, that the U.S. Court for China was 'a court for the United States,'" indicating that the court was like other federal courts, Lobingier acknowledged that the U.S. Court for China, in reality, exercised "much of the jurisdiction commonly possessed by a state court."[25] The court thus adjudicated cases that look different from a federal district court's typical docket, and were therefore usually fodder for state courts –

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[21] *In re Young John Allen's Will*, 1 Extraterritorial Cases 92, 103-04 (1907).

[22] *See Biddle v. United States*, 156 F. 759, 761-63 (9th Cir. 1907).

[23] *United States v. Engelbracht*, 1 Extraterritorial Cases 169, 172-74 (1909).

[24] *See*, *e.g.*, *Cavanagh v. Worden*, 1 Extraterritorial Cases 365, 366 (1914) (divorce); *In re Alford*, 1 Extraterritorial Cases 441, 443 (1915) (adoption).

[25] *In re Corrigan's Estate*, 1 Extraterritorial Cases 717, 721 (1918); *see Smith v. Am. Asiatic Underwriters, Fed., Inc., U.S.A.*, 127 F.2d 754, 755 (9th Cir. 1942).

including subjects as varied as contract, probate, family, and divorce law. Thus, unlike other courts, the primary jurisdictional limit was based on the identity of the litigants as Americans (or their ties to America) rather than diversity of citizenship or a federal question.

But the U.S. Court for China was unlike other federal courts in one other important respect because it did not need to apply the Constitution to those who appeared before it. That practice stemmed from *Ross v. McIntyre (In re Ross)*, which held that constitutional protections did not apply extraterritorially. In an appeal from a consular court in Japan, the Supreme Court simply held that "[t]he Constitution can have no operation in another country."[26] From the beginning, the U.S. Court for China followed *Ross* even though it was not part of the consular system under which *Ross* was decided.

By 1924, *In re Ross*'s holding was firmly established in the court. Lobingier starkly explained the implications of that fact to an enterprising attorney who published an op-ed in an attempt to raise public support for his client's right to a jury trial. Lobingier threatened to hold in contempt anyone else who attempted to awaken public opinion, lambasting the "fundamental fallacy in the . . . contention . . . that the Federal Constitution has been extended to China." There was "no hint that the constitution is in force [in China], and naturally; for that would have been in defiance of the superior tribunal, the Supreme Court."[27]

Lobingier's bold proclamation is why Mr. Casement's habeas petition had little chance of success. Some disagreed with the non-extraterritorial application of the Constitution. For example, Cushing, the American negotiator of the Wanghia Treaty, believed that the Constitution would apply to U.S. adjudications in China.[28] But the Supreme Court's holding in *Ross* broadly precluded extraterritorial application of the Constitution. That is not to say that the lack of constitutional constraints gave the U.S. Court for China *carte blanche*; other practices limited the court's power. But it did mean that many fundamental procedural and substantive rights Americans took for granted – such as the right to a jury trial – did not exist for those who appeared before the Court for China.

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[26] 140 U.S. 453, 464 (1891).

[27] *United States v. Furbush*, 2 Extraterritorial Cases 74, 84-85 (1921).

[28] *See* Caleb J. Cushing, *United States Judicial Authority in China*, 7 Op. Att'y Gen. 495, 503 (1855).

Determining that the Constitution did not apply did not answer the converse question: What law applied? The authorizing statute was quite vague. When a treaty or law was "deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied."[29] For a court with such breadth in subject-matter jurisdiction, this deficiency in treaty and statute law quickly became apparent. Beyond the minimal statutory authority in that catch-all provision, the court lacked a body of substantive law to apply.

What that meant was up to the judges of the U.S. Court for China. Thus, in *United States v. Biddle*, Wilfley decided that "common law" meant the common law in force at the time of the Founding instead of any other state's common law. That avoided the effect of a century of state-specific common-law development.[30] But the retro common law of 1789 often failed to address modern legal questions. To address those situations, Wilfley borrowed from the then-recent municipal codes, passed by Congress as statutes, regulating conduct in Washington, DC and the Territory of Alaska.[31] That solution – in theory – allowed judges in China to use modern criminal and civil laws, while simultaneously leaving the Founding era common law as a rare, but necessary, fallback.

That rule also led to questionable applications. For instance, in *United States v. Osman*, a Guamanian challenged his conviction by claiming the punishment called for in the borrowed statute required a convict to be sent to a workhouse in the District of Columbia. And since that was obviously impossible to do because Osman was in Shanghai, he argued that the statute was not suitable for China and could not apply. But Lobingier recognized that Osman's argument would logically render useless many of the court's criminal laws, so he held that "any pertinent act of Congress is in force here regardless of the limits within which it was originally intended to apply."[32] To put it another way, while Congress may not have intended Alaska and District of Columbia law to apply in China, that did not matter; *any* law

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[29] *See* An Act Creating a United States Court for China and Prescribing the Jurisdiction Thereof, *supra* note 3, at § 6.

[30] *United States v. Biddle*, 1 Extraterritorial Cases 84, 85-87 (1907).

[31] *Id.* at 87.

[32] *United States v. Osman*, 1 Extraterritorial Cases 540, 541-44 (1916).

passed by Congress could provide the rule of decision in the U.S. Court for China. And when the statute did not make perfect sense in this new context, the court would repurpose it.

That approach created its own problems. Lobingier aimed for a consistent jurisprudence, but a rule that all federal laws *could* apply in China made it difficult to figure out *which* laws actually did apply, particularly when those laws conflicted. So Lobingier used canons of interpretation to figure out which laws would apply – both conventional canons such as newer laws taking precedence over older ones and less conventional canons in that general acts took precedence over specific ones.[33] But such a standard for determining which law to apply led to inconsistencies – even within a given area of the law. For example, while the court used District of Columbia divorce law generally, it used Alaska law to determine the residencies of the parties to a divorce.[34]

Idiosyncrasy also played some role in the development of the law in the U.S. Court for China. Lobingier liked Alaskan corporation law – so much so that when the territory's elected representatives chose to *repeal* the law, he continued applying the repealed territorial statutes. Recognizing the odd picture of an American court applying repealed territorial law in China, Congress passed the China Trade Act to provide for the chartering of corporations in China. But the U.S. Court for China continued to apply the otherwise-defunct Alaskan Law until Congress explicitly precluded its use.[35]

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[33] *See* Ruskola, *supra* note 9, at 225-26 (laying out these principles). *Cavanagh*, 1 Extraterritorial Cases at 371 ("Of the two Acts of Congress above cited prescribing grounds for divorce, that relating to the District of Columbia, as the latest expression of legislative opinion, will naturally be applied here if the two are in conflict."); *Ezra v. Merriman*, 1 Extraterritorial Cases 809, 810 (1918) ("In applying federal statutes in [China] the general have always prevailed over the special.").

[34] *Ruskola*, *supra* note 9, at 227 (quoting *United States Court for China: Hearing on S. 4014 before the H. Comm. on Foreign Affairs*, 64th Cong. 16 (1917) (statement of Chauncey Holcomb)).

[35] *See id. See also United States ex rel. Raven v. McRae*, 1 Extraterritorial Cases 655, 656 (1917) (refusing to be held hostage to Alaska's repudiation of its own laws); An Act to Authorize the Creation of Corporations for the Purpose of Engaging in Business Within China ("China Trade Act"), Pub L. No. 67-312, 42 Stat. 849-56 (1922).

Finally, when all else failed, the court occasionally used laws of a more local flavor. Both the laws of the International Settlement – the name for then-semi-autonomous Shanghai, occupied in part by foreign powers – and even Chinese custom could apply in the court.[36]

IV.
THE (NOT SO LIKELY) FUTURE OF THE COURT FOR CHINA

The United States no longer has extraterritorial rights in China. But both acutely with the COVID-19 crisis and more generally, with China's rise in global influence and attendant issues with Uighurs, the South China Sea, Huawei, and many others, tensions concerning the legal relationship between the United States and China have been building. Some legislators have introduced bills that, if passed, will abrogate China's sovereign immunity.[37] And at least one state has sued China seeking redress for its alleged wrongdoing involving COVID-19's initial spread.[38]

As policymakers seek to address the rising legal conflict between the U.S. and China, the history of the legal relationships between the two provides a useful touchstone. While the 20th Century opened with an American court in China adjudicating claims involving (mostly) Americans, some plans today would allow Americans to sue China in American courts. Congress is again debating questions of jurisdiction, sovereignty, and fair play involving U.S. courts and China.[39] Perhaps this will lead to a

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[36] *See United States v. Donohoe*, 1 Extraterritorial Cases 347, 350-52 n.5 (citing *Rex v. Lee Ki-Lung*, H.B.M. Supreme Court for China and Corea, Mar. 13, 1919, North China Herald 732) (describing International Settlement laws); *King Ping Kee v. Am. Food Mfg. Co.*, 1 Extraterritorial Cases 735, 737 (1918) (considering "Chinese custom" in a contract dispute).

[37] Holding the Chinese Communist Party Accountable for Infecting Americans Act of 2020, H.R. 6519, 116th Cong. 2020. Congress additionally considered other non-traditional approaches to affect the United States-China relationship as well. *See*, *e.g.*, Stopping Censorship, Restoring Integrity, and Protecting Talkies Act, S. 3802, 116th Cong. 2020; Holding Foreign Companies Accountable Act, S. 945, 116th Cong. 2020.

[38] Jan Wolfe, *In a First, Missouri Sues China Over Coronavirus Economic Losses*, REUTERS (Apr. 21, 2020), www.reuters.com/article/us-health-coronavirus-china-lawsuit/in-a-first-missouri-sues-china-over-coronavirus-economic-losses-idUSKCN2232US.

[39] *See*, *e.g.*, A Bill to Secure Justice for Victims of Novel Coronavirus in the United States and

system like that of the Iran-United States Claim Tribunal, whereby a set of arbitrators settles claims between the two countries.[40] After all, a court in America resolving disputes between Americans and China is not too dissimilar from the prior iteration in Shanghai.

But while it seems unlikely that a specialized American court located in Shanghai will be the result of modern foreign policy wrangling, understanding how past legal arrangements with China worked may inform what our countries try to do in the future. Our shared history may very well contribute to the necessary atmosphere of trust to form future institutions to adjudicate claims. And here at home, while the 1943 treaty with China abolished both the U.S. Court for China and the United States' extraterritorial rights, the court's legacy (and even some binding precedent from appeals to the U.S. Court of Appeals for the Ninth Circuit) lives on.

Abroad, S. 3588, 116th Cong. 2020.

[40] Iran-United States: Settlement of the Hostage Crisis, 20 I.L.M. 223 (1981), 230-33 (establishing the Iran-U.S. Claims Tribunal).