1. Introduction

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1. EXTRATERRITORIAL JURISDICTION

How is it that the criminal law of one nation can apply to conduct by individuals or corporate bodies in other nations, or in areas beyond national jurisdiction? This is so because principles of extraterritorial jurisdiction recognise that human activity, including criminal activity, is not confined to territorial borders. This is recognised in municipal and international law, as well as codification and custom. On one hand, the assertion of jurisdiction by States outside their territory can be a useful response to crime, but can be a source of controversy on the other. This is because the principles of jurisdiction under international law do not adequately resolve competing claims to jurisdiction and are primarily concerned with the relationship between States, rather than between the State and the individual.

Exercises of extraterritorial jurisdiction, where a nation State asserts legal authority over conduct occurring outside its borders, reveal much about the relationship between international and domestic law. This is because the task of answering questions of jurisdictional competence over criminal conduct often falls to domestic courts, who may look to principles of constitutional law, criminal law, and international law. In the context of extraterritorial jurisdiction over criminal conduct, courts and law makers will also consider principles of criminal law, as well as the particular extent of government power. The study and practice of extraterritoriality is therefore inherently interdisciplinary and is simultaneously both practical and philosophical in its consideration of power and relations between nations, and between the state and the individual.

At its essence, jurisdiction is a claim to authority. Jurisdiction is a technical means of establishing public authority,¹ and therefore, considering jurisdictional practice is a means of gaining insight as to the nature of public authority.

¹ Shaunnagh Dorsett and Shaun McVeigh, 'Jurisprudences of Jurisdiction: Matters of Public Authority' (2014) 23(4) *Griffith Law Review* 569, 588.

Ultimately, jurisdiction is at ‘the political heart of the juridical order’,² and is a ‘a central concept in the framing of the legal world’.³

Jurisdiction can be prescriptive, enforcing, or adjudicative. Prescriptive jurisdiction, for example, refers to a statute prescribing legal authority over particular conduct by articulating it as an offence. Enforcement jurisdiction is the legal authority to arrest, detain, or punish. Adjudicative jurisdiction, for example, describes the legal authority of courts to adjudicate on a given matter. This means all arms of government – the legislature, the executive, and the judiciary – are involved in the development, and practice, of jurisdictional norms. This book is primarily concerned with prescriptive extraterritorial criminal jurisdiction. However, all three exercises of jurisdiction are considered in an intermingled way. In that context, and for current purposes, the term ‘extraterritorial jurisdiction’ describes an exercise by a State of prescriptive, adjudicative, or enforcement authority over conduct outside that State’s physical territory.

This book does not directly address enforcement-related issues, such as the collection of evidence located in other countries during criminal investigation and prosecution, nor does it consider the extraterritorial application of competition law. That is not to say those issues are not important; simply that such issues are beyond the intended scope of this work.

Much of the prevailing scholarship on extraterritorial jurisdiction available in the English language focuses on the experience of European and/or North American countries. For that reason, this book seeks to consider the role and practice of extraterritorial criminal jurisdiction in a sample of countries in East Asia.

As a preliminary matter, references to extraterritorial jurisdiction in this book refer specifically to claims by a nation State to legal authority over conduct occurring outside its physical borders. This differs from the colonial concept of extraterritoriality in which foreign nationals were exempt from local laws in Asian countries and instead were covered by the laws of the country of their nationality. The latter concept is not the subject of this book. Even setting this dual meaning aside, the term ‘extraterritoriality’ is still a broad concept. It is a term used differently, even if only slightly, by different authors. For example, some commentators are concerned with the extraterritorial operation of human rights law, or extraterritorial enforcement through military action. Some describe assertions of legislation that apply extraterritorially, but that have a territorial nexus, to be ‘territorial’ in nature. The particular focus of this

² Asha Kaushal, ‘The Politics of Jurisdiction’ (2015) 78(5) *The Modern Law Review* 759, 759.

³ Ibid.

work, however, is on criminal offences in domestic legislation that apply to conduct occurring, or partially occurring, outside the geographic boundaries of that State.

As a matter of customary international law, States are entitled to exercise jurisdiction on three main bases: territoriality; nationality; and universality. Put simply, the nationality principle can provide a State with grounds for jurisdiction where a victim (passive nationality), or a perpetrator (active nationality), is a national of that State. The territoriality principle may be invoked where conduct either takes place within a nation's borders (subjective territoriality), or the effects of the conduct are felt within the borders (objective territoriality). The universality principle is reserved for conduct recognised as a crime under international law, such as piracy, genocide and crimes against humanity.

International law also recognises a 'protective principle', wherein a State can assert jurisdiction over foreign conduct that threatens national security. There are also claims to an 'effects principle', by which jurisdiction over extraterritorial conduct is enjoyed because the effects of that conduct are felt by a State, although this is controversial. These grounds will be further explained in Chapter 2, which recaps the principles of extraterritorial jurisdiction at international law. As noted at the outset, assertions of extraterritoriality also often involve consideration of domestic constitutional law, and in the context of criminal jurisdiction, criminal law and procedure. Where such issues arise in the context of one of the East Asia countries chosen for study in this book, this is dealt with in the Chapter on that country.

2. CONTROVERSIES IN EXTRATERRITORIALITY

By way of introduction, there are several practical and theoretical controversies relating to the assertion of extraterritorial jurisdiction. Some of these are considered in more detail in Chapter 2. However, to give context at this point, contemporary controversies in extraterritoriality include the following:

'More or Less': There are commentators (such as Dan Svantesson) who view the constraints of traditional bases of jurisdiction as unnecessarily restraining the efficacy of the law in meeting contemporary challenges (such as those posed by crime on the internet), and for whom territoriality as the central pillar of jurisdiction no longer makes sense. Others (such as Cedric Ryngaert)

have considered the potential of unilateral assertions of extraterritorial jurisdiction to realise global values.⁴ For example, it is observed:

The aim, and the very *raison d'être*, of the law of jurisdiction has historically been to legally delimit spheres of State power and prevent international conflict from arising. In the classic view, the international law of jurisdiction aspires to prevent global chaos flowing from different States applying their own laws to one and the same situation. In a world characterized by increasing interdependence and multiple identities, the normative force of this ordering goal may not have run out of breath. Concurrently, however, a law of jurisdiction that limits itself to keeping States at arm's length from each other may fail to recognize that States have adopted common substantive norms and have set joint goals, for whose actual realization the international community may crucially depend on unilateral action. The limits of such action in the global interest are a key challenge for a modern law of jurisdiction.⁵

Those commentators, in essence, advocate 'more' extraterritoriality (in the right circumstances). On the other hand, there are commentators (such as Austen Parrish)⁶ who are concerned unilateral assertions of jurisdiction undermine meaningful multilateralism and for whom the idea of legislation applying to persons outside the relevant political system is undemocratic. Those commentators want 'less' extraterritoriality. Others still are concerned that competing claims to jurisdiction can also contribute to tensions between States.⁷

'*Accountability gaps*': generally speaking, domestic constitutional frameworks on extraterritoriality are permissive and often mean that jurisdictional authority is easily won by the State, but that jurisdictional obligations in terms of accountability, less so. For example, some constitutional guarantees have been excluded from applying to investigations and prosecutions of extraterri-

⁴ Cedric Ryngaert, *Unilateral Jurisdiction and Global Values* (Eleven Publishing, 2015).

⁵ Cedric Ryngaert, 'Jurisdiction' in Jean d'Aspremont and Sahib Singh (eds), *Concepts for International Law, Contributions to Disciplinary Thought* (Edward Elgar Publishing, 2019) 577.

⁶ Austen Parrish, 'Reclaiming International Law from Extraterritoriality' (2009) 93(815) *Minnesota Law Review* 815, 859–60.

⁷ See, e.g., the tension in relations between India and Italy as a result of competing assertions of jurisdiction in the Italian Marines Case, see: Devirup Mitra, 'India, Italy Spar Over Marines Issue Again as Ad-hoc Tribunal Reviews Enrica Lexie Case', *The Wire* (Article, 30 March 2016) <http://thewire.in/2016/03/30/india-italy-spar-over-marines-issue-again-as-ad-hoc-tribunal-reviews-enrica-lexie-case-26752/>.

torial conduct.⁸ In *R v Hape*,⁹ and *R v Klassen*,¹⁰ the Supreme Court of Canada held the *Charter of Rights and Freedoms* is limited to Canadian provinces and territories, and does not apply extraterritorially to searches and seizures outside of Canada. In *Ker v Illinois*,¹¹ the US Supreme Court held that forcible abduction presents no valid objection to a criminal trial. The ‘Ker-Frisbie’ doctrine provides that illegalities in the extradition process will not bar prosecution in US Courts. In that case, the accused was forcibly kidnapped from Peru and brought to the US for trial. Some commentators express concern that an accused person subject to extraterritorial criminal jurisdiction will not necessarily know the forum in which they are to be tried or be able to anticipate which rights and protections will apply, and which will not. Further, the protection against double jeopardy is limited to prosecutions within a State, and not as between them.¹²

‘Motive’: While there may be motives of efficacy or legal morality motivating assertions of extraterritoriality, those motives may also be highly political. For example, in the Australian case of *Moti v The Queen*,¹³ the Commonwealth of Australia conceded that, ‘the motivation [for the prosecution] was largely to prevent the applicant from becoming the Attorney-General in the Solomon Islands’.¹⁴ The concern is that extraterritorial jurisdiction can also be used as a backdoor means of implementing foreign policy, rather than as a justice tool. Some scholars suggest the legitimacy of assertions of extraterritorial criminal jurisdiction should be guided by ‘comity’ or the international law doctrine of ‘non-interference’. However, these doctrines are concerned with the interest of States not individuals and ‘those with the most leverage to demand and enforce accountability may be those with the least interest in doing so’.¹⁵ Further,

⁸ See, e.g., the Canadian cases of *R v Hape* [2007] SCC 26 (‘*R v Hape*’); *Amnesty International Canada v Canada (Minister of National Defence)* [2008] FC 336; *R v Klassen* [2008] BCSC 1762 (‘*R v Klassen*’).

⁹ *R v Hape* (n 8).

¹⁰ *R v Klassen* (n 8).

¹¹ *Frederick Ker v Peoples of the State of Illinois*, 119 US 436 (US, 1886).

¹² See *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(7); Human Rights Committee, *Communication No. 204/1986: AP v Italy*, 21st sess, UN Doc CCPR/C/21/D/204/1986 (2 November 1987); Human Rights Committee, *Communication No 692/1996: ARJ v Australia*, 60th sess, UN Doc CCPR/C/60/D/692/1996 (11 August 1997) [6.4].

¹³ [2011] 245 CLR 456.

¹⁴ Commonwealth Director of Public Prosecutions, ‘Respondent’s Summary of Argument’, Submission in *Julian Ronald Moti v R*, No 47 of 2010, 3.

¹⁵ Simon Chesterman, ‘Globalisation and Public Law: A Global Administrative Law?’ in Jeremy Farrall and Kim Rubenstein (eds), *Sanctions, Accountability and Governance in a Globalised World* (Cambridge University Press, 2009) 75, 81.

comity is ‘a political, not a legal solution’,¹⁶ and consists of ‘little more than an exhortation to neighbourliness’.¹⁷ To argue that to allow, let alone compel, a judge to make such a political decision, may be thought by some to be inappropriate.¹⁸ This is because courts do not have independent access to foreign intelligence, and therefore, ‘may not understand the far-reaching implications of their decisions’.¹⁹

‘*Cosmopolitanism*’: Some commentators (such as Richard Shapcott)²⁰ view extraterritorial jurisdiction, particularly the active nationality principle, as an expression of cosmopolitanism because such assertions are premised on a recognition that crimes committed against non-nationals in foreign places are just as reprehensible as a crime committed locally against nationals because all persons have value, and not only citizens. Others (such as this author) recognise and accept that premise (particularly, e.g., in the regulation of transnational crimes, such as child sex tourism), but have also argued that extraterritorial jurisdiction is not inherently cosmopolitan because it is capable of being wielded for both cosmopolitan (humanitarian) and non-cosmopolitan (unilateral political) purposes and therefore, extraterritoriality is a double-edged sword.

Other debates in the regulation of extraterritorial jurisdiction also exist beyond these, but it is not intended to here resolve those, or even the controversies I mention above. These are listed here merely as an attempt to avoid a situation where a reader might engage with the material in this book without having first had the benefit of being alerted to the existence of examples of the broader debate and the deepening body of literature on the topic.

3. THE ASIAN CENTURY

At the time of writing, United Nations reports suggest 60 per cent of the global population live in Asia.²¹ The 21st century has seen a geopolitical shift in

¹⁶ David J. Gerber, ‘Beyond Balancing: International Law Restraints on the Reach of National Laws’ (1984) 10(185) *Yale Journal of International Law* 185, 205 (‘Gerber’).

¹⁷ Ibid.

¹⁸ Ibid., 206.

¹⁹ Ibid.

²⁰ Richard Shapcott, ‘Human Rights, Extraterritoriality and the Good International Citizen: A Cosmopolitan Perspective’ (2020) 34(2) *International Relations* 246, 254–5.

²¹ United Nations Department of Economic and Social Affairs, ‘World Population Prospects 2019’, *United Nations Population Division* (Report, 17 June 2019) 6 <https://population.un.org/wpp/Download/Standard/Population/>; See also, World Population Review, ‘China Population 2020 (Live)’ (Population Tracker, 7 December 2020) <http://worldpopulationreview.com/countries/china-population/>.

global power relations towards Asia, leading to the coining of the term, the 'Asian Century'. This is not least because rapid economic development in Asia is 'a seminal turning point in history'.²² For example, a 2011 report by the Asian Development Bank suggested that 'Asia is in the middle of a historic transformation'²³ and if the trajectory maintains, 'by 2050 its per capita income could rise sixfold in purchasing power parity (PPP) terms to reach Europe's levels today'.²⁴ In turn, this would mean 'Asia would regain the dominant economic position it held some 300 years ago, before the industrial revolution'.²⁵ Of course, this report could not have accounted for the global economic downturn following the COVID-19 pandemic in 2020, but nonetheless, 'the changing contours in contemporary international relations'²⁶ have reflected 'a power shift from the West to Asia.'²⁷

However, other commentators, such as Michael R. Auslin in his 2017 book, *The End of the Asian Century: War, Stagnation, and the Risks to the World's Most Dynamic Region*,²⁸ suggest that 'unfinished political revolutions, failed economic reforms, demographic pressure, lack of regional unity, and the threat of war'²⁹ mean the Asian Century is already in demise. A review of this book by Zhiqun Zhu suggests this might be an overly pessimistic view and the

²² Scott B. MacDonald and Jonathan Lemco, *Asia's Rise in the 21st Century* (Praeger, 2011) 2.

²³ Asian Development Bank, 'Asia 2050: Realizing the Asian Century', *Asian Development Bank – Publications* (Executive Summary Report, 2011) 3 <http://adb.org/sites/default/files/asia2050-executive-summary.pdf>.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Mohamad Rosyidin, 'Foreign Policy in Changing Global Politics: Indonesia's Foreign Policy and the Quest for Major Power Status in the Asian Century' (2017) 25(2) *South East Asia Research* 175, 176 ('Rosyidin').

²⁷ Ibid; See, also, Caitlin Byrne, 'Issues in Australian Foreign Policy' (2018) 64(2) *Australian Journal of Politics and History* 293, 295; Testimony to House Committee on Foreign Affairs: 'The Rebalance to Asia: Why South Asia Matters', United States Congress, Washington, D.C., 13 March 2013 (Vikram Nehru).

²⁸ Michael R. Auslin, *The End of the Asian Century: War, Stagnation, and the Risks to the World's Most Dynamic Region* (Yale University Press, 2017).

²⁹ Ibid., cited in Rosyidin (n 26).

problems Auslin identifies are ‘arguably growing pains and are unlikely to fundamentally change the dynamic development of the region’.³⁰ In Zhu’s view:

For most people in Asia, it is not an issue whether or when the Asian century will come to an end; rather, it is how to leverage globalization and promote more equitable, inclusive, stable, and sustainable development.³¹

On either account, the point is that the geopolitical significance of Asia has increased.³² Despite this, ‘law remains one of the least understood aspects of East Asian traditions’.³³ It is hoped this book will make a modest contribution to that project.

4. EAST ASIA

East Asia is significant in its own right. Indeed, the ‘impact many countries in East Asia now have in world politics, international security, the global economy and development, and global governance’³⁴ is greater than ever. Back in 2000, East and South-East Asia was home to at least one-third of the world’s population.³⁵ East Asian institutions are ‘highly integrated into the global political economy’;³⁶ regional tensions have consequences world-wide; technologies are pervasive. In short, East-Asian legal systems matter. An examination of extraterritorial criminal jurisdiction in Asia is (at the very least) instructive as to significant influences in the future relationship between domestic and international orders. For that reason, this book may be of interest to law and policy makers, scholars, and practitioners.

In my first book, *Accountability in Extraterritoriality: A Comparative and International Law Perspective* (Edward Elgar, 2017), I considered extraterrito-

³⁰ Zhiqun Zhu, ‘Book Review - Michael R. Auslin, *The End of the Asian Century: War, Stagnation, and the Risks to the World’s Most Dynamic Region*’ (2017) 22(3) *Education about Asia* 68, 69.

³¹ Ibid.

³² Rosyidin (n 26) 177.

³³ Marie Seong-Hak Kim, ‘Searching for the Spirit of Korean Law’ in Marie Seong-Hak Kim (ed), *The Spirit of Korean Law: Korean Legal History in Context* (Brill, 2016) 1 (‘Seong-Hak Kim’).

³⁴ Xiaoming Huang, *International Relations of East Asia: Structures, Institutions and International Order* (Macmillan Education UK, 2019) 1.

³⁵ Geoffrey McNicoll, ‘Demographic Future of East Asian Regional Integration’ in T.J. Pempel (ed), *Remapping East Asia: Construction of a Region* (Cornell University Press, 2005) 54.

³⁶ Etel Solingen, ‘East Asian Regional Institutions: Characteristics, Sources, Distinctiveness’, cited in T.J. Pempel, ‘Introduction: Emerging Webs of Regional Connectedness’ in T.J. Pempel (ed), *ibid.*, 31.

rial criminal jurisdiction as practiced in Australia, India and the United States. In this book, I take a similar approach to the issue of extraterritoriality, but instead to three East Asian nations: China, Japan, and South Korea, nations with interconnected legal histories and geographical realities. I have done so with the help of co-authors with the relevant language skills and qualifications: Sanzhuang Guo for Chapter 3 on Extraterritorial Jurisdiction and China; Machiko Kanatake for Chapter 4 on Extraterritorial Jurisdiction and Japan; and Heetae Bae for Chapter 5 on Extraterritorial Jurisdiction and South Korea. The input of these co-authors has been invaluable to me in preparing this book. Notwithstanding that, I formulated the structure and scope of the project and therefore, any faults and limitations of this work are mine alone.

This book was written with a view to improving the way western countries understand how principles of extraterritorial criminal jurisdiction operate in parts of East Asia. The term ‘East Asia’ is generally understood as including China, Hong Kong, Japan, Macau, Mongolia, North Korea, South Korea, and Taiwan.³⁷ As noted above, this book considers only three of those countries: China, Japan, and South Korea in Chapters 3, 4, and 5, respectively.

This is not to suggest any sort of homogeneity between these nations, but simply by way of a contribution to knowledge. East Asia is ‘exceptionally diverse culturally, linguistically, and religiously’.³⁸ Despite claims of the existence of some sort of set of ‘Asian values’, East Asia is a ‘pastiche of Sinic, Japanese, Islamic, Buddhist, Muslim and Christian traditions’³⁹ and none provides a significantly unifying cohesiveness across the region.⁴⁰ In particular, China, Japan, and Korea represent different ‘cultural and intellectual

³⁷ T.J. Pempel, ‘Introduction: Emerging Webs of Regional Connectedness’ in T.J. Pempel (ed), *ibid.*, 25 (‘Pempel – Introduction’); Michael Kort, *The Handbook of East Asia* (Twenty-First Century Books, 2006); See also, World Atlas (online at 16 August 2020) <https://www.worldatlas.com/articles/which-countries-are-part-of-east-asia.html>; World Population Review (online at 7 December 2020) <https://worldpopulationreview.com/country-rankings/east-asian-countries>; International Mission Board, ‘Introducing East Asian Peoples’, *IMB – East Asian Peoples* (Report, 2016) https://www.imb.org/wp-content/uploads/2016/09/Introducing_EAP_Booklet_09_2016_10.pdf; See generally: Shiping Hua and Ruihua Hu, *East Asian Development Model: Twenty-first Century Perspectives* (Routledge, 2017); Ian Holliday, ‘Productivist Welfare Capitalism: Social Policy in East Asia’ (2000), 48(4) *Political Studies* 706; Markus Hund, ‘ASEAN Plus Three: Towards a new age of panEast Asian regionalism? A skeptic’s appraisal’ (2003) 16(3) *The Pacific Review* 383.

³⁸ Pempel – Introduction (n 37) 1.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

traditions',⁴¹ and diverse political, economic, and social histories. Each has different experiences in international relations.

Despite many points of contrast between the three nations, however, there are common themes. For example, the influence of the Chinese Tang code in Chinese, Korean, and Japanese legal histories is in some ways analogous to the influence of Justinian Code in Europe.⁴² The pre-modern incarnations of these countries 'shared a common legal culture thought polycentric circulation of law codes and other legal works'.⁴³ East Asian countries, at various points in history, 'shared common values, writing systems, and statecraft'.⁴⁴ The region, therefore, like most regions, is characterized by convergences and divergences, and this is true too, for experiences of extraterritoriality.

5. AIMS AND STRUCTURE OF THIS BOOK

The aim of this book, as intimated above, is to identify and explain how extraterritorial criminal jurisdiction operates in a sample of East Asian nations. The second aim is to identify themes of convergences and divergences in the operation of extraterritorial jurisdiction in a sample of East Asian nations and in the relationship between international and domestic law in that region. In essence, this book investigates the regulation of extraterritoriality in these chosen jurisdictions; the constitutional context in which such regulation takes place; and the ensuing implications for transnational criminal law and for the principles of jurisdiction at international law.

This chapter is introductory and seeks only to introduce the concept of extraterritorial jurisdiction and to affirm the significance of East Asian jurisdictions to the global order. Chapter 2, however, undertakes a significant 'recap' of the principles of jurisdiction at international law. It does so not only in the sense of the jurisdictional authority of the State, but also considers the jurisdictional obligations that follow the State extraterritorially. The adequacy of principles of jurisdictional restraint is reflected upon. Further, Chapter 2 introduces some of the contemporary challenges to traditional conceptions of jurisdiction, such as those presented by the internet and by increased human activity in outer space.

⁴¹ Xiaoming Huang, 'The Invisible Hand: Modern Studies of International Relations in Japan, China, and Korea' (2007) 10(2) *Journal of International Relations and Development* 168, 170–71.

⁴² Seong-Hak Kim (n 33) 3–4.

⁴³ Jerome Bourgon and Pierre-Emmanuel Roux, 'The Chosen Law Codes in an East Asian Perspective' in Marie Seong-Hak Kim (ed) *The Spirit of Korean Law: Korean Legal History in Context* (Brill, 2016) 21.

⁴⁴ Seong-Hak Kim (n 33) 3.

Chapters 3, 4 and 5 are the ‘country studies’ in that each considers the approach of an East Asian nation to extraterritorial criminal jurisdiction. Chapter 3 considers extraterritorial criminal jurisdiction in China. Chapter 4 considers extraterritorial criminal jurisdiction in Japan. Chapter 5 considers extraterritorial criminal jurisdiction in South Korea. Each of these country chapters will ‘set the scene’ with a brief historical overview of events leading to the current modern nation state. While this may at first glance appear superfluous, an understanding of the way in which law manifests in a particular State is superficial if not accompanied by at least some understanding of that State’s broader history. Xue Hanqin’s articulation of this notion in the context of international law is persuasive:

The fact that States adopt different positions on various issues of international law cannot always be explained by legal reasoning, as the answer often lies elsewhere. Therefore, it is always important and necessary to study international law from the perspective of individual States in order to better appreciate how international law operates in each specific political, economic and social context.⁴⁵

Similarly, Oscar Schachter has asked:

[O]ught we not also consider the socio-historical dimension, especially those major transformations in society that profoundly affect the structure and process of international law?⁴⁶

The ‘country studies’ also consider the constitutional context in which extraterritoriality is regulated in that State and analyse examples of assertions of extraterritorial criminal jurisdiction. This is because ‘issues of constitutional law and good governance are being seen increasingly as vital issues in all types of society’.⁴⁷ Constitutional arrangements also go to the core of public authority.

Consideration is also given, where the issue arises, to the relationship between domestic and international law in the adjudication by domestic courts on questions of extraterritoriality. Each country chapter then concludes with brief observations about exercises of extraterritorial jurisdiction by that particular State, and the way in, and extent to which, such exercises are regulated.

⁴⁵ Xue Hanqin, *Chinese Contemporary Perspectives on International Law – History, Culture and International Law* (Hague Academy of International Law, 2012) 16.

⁴⁶ Oscar Schachter, ‘International Law in Theory and Practice: General Course in Public International Law’ (1982) 178 *Recueil des cours* 22–3, cited in Hanqin, *ibid.*, 17.

⁴⁷ Peter Layland et al, ‘Constitutional Systems of the World’ in Shigenori Matsui (ed), *The Constitution of Japan: a Contextual Analysis* (Hart, 2010) ii.

The chapters will draw on judicial decision making, constitutional frameworks, criminal law frameworks, treaty frameworks, and the works of scholars and policy makers. The final chapter draws out themes of convergence and divergence and what that might mean for the future of the law on jurisdiction.

Chapter 6 concludes with a consideration of convergences and divergences in the approach of China, Japan, and South Korea to extraterritorial criminal jurisdiction. Ultimately, while our current global paradigm of jurisdiction is overwhelmingly territorial, there is 'long-standing and clearly increasing recognition that strict territoriality is ill-equipped for today's modern society'.⁴⁸ This has created a 'puzzle'.⁴⁹ It may be that this examination of the current approach to extraterritoriality in East Asia will make a modest contribution to working out how the pieces in that puzzle can fit together, evolve, and develop to meet justice challenges now and in the future.

⁴⁸ Dan Svantesson, *Solving the Internet Jurisdiction Puzzle* (Oxford University Press, 2017) 4.

⁴⁹ See generally *ibid.*