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DEFINING THE LINE BETWEEN CENTER AND PERIPHERY:
THE FOREIGN CRIMINAL AS SYMBOL OF SOVEREIGNTY IN CONTEMPORARY
CHINA

BY
JOSIAH CASE

THESIS

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Adviser:

Professor Jeffrey Martin

ABSTRACT

In this paper, I examine the Chinese government's treatment of foreigners within its borders, contrasting the high-profile case of British national Akmal Shaikh with the on-the-ground situation, where foreigners generally receive lenient treatment from the police. I argue that this dichotomy parallels the Mainland government's position towards Taiwan and Hong Kong, where *de jure* sovereignty is prioritized over *de facto* control. In explaining how some foreign criminals like Shaikh are moved from the periphery to the center of the government's attention, I highlight the potential that such cases provide the Communist Party of China's leadership to assert their power on the global stage and to cement their legitimacy in the eyes of their own populace. Building on work done by Tim Liao and others on China's rhetorical strategies in issues of contested sovereignty, I will show how the Chinese media uses its portrayal of select foreign criminals as political symbols to fuel the government's "memory project" regarding China's relationship with Western countries. By examining how this constructed national memory is related to contemporary issues of crime and diplomacy, we can better understand how Chinese leadership understands and performs sovereignty.

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Chapter 1

Introduction

The issue of state sovereignty is central to understanding contemporary China. Discussions on this topic tend to center around the PRC's unusual relationship with Taiwan and Hong Kong, and while claims over territory are indeed an important aspect to Chinese sovereignty, much can also be learned through observing the government's performances of sovereignty within the Mainland itself. My work explores the Chinese government's treatment of foreign individuals charged with crimes in an attempt to illuminate Chinese claims and practices of sovereignty. I argue that how the central government punishes or tolerates police to show leniency to Western foreigners for their crimes can be understood as a reflection of the Chinese leadership's unique understandings of their own sovereignty, and as a performance for the domestic and international audiences of those sovereignty claims. I explore this argument through the lens of one particular case- that of Akmal Shaikh, a Pakistani-born British citizen who in 2009 became the first European national executed in the People's Republic of China (PRC) in over fifty years. I show how we can read this case, and others involving foreign nationals in China, as a performance of sovereignty staged by the Chinese government for the audiences of other countries and the Chinese public. This reading, I argue, affords valuable new insight in regards to how the PRC's leaders perceive of their own sovereignty. Specifically, they claim complete *de jure* authority over foreigners¹ who commit crimes inside China's borders, even though a lack of complete *de facto* control on the ground is tolerated. This is significant in a number of ways. Historically, foreign nations (mostly European) denied this power to both the

¹ In this work, I use the word "foreigners" to broadly mean people from Europe, North America, and Australia who are in China. When considering contemporary issues of extraterritoriality, I am excluding individuals protected by diplomatic, military, or other forms of internationally-recognized immunity.

Qing and Republican governments that preceded the PRC. Juxtaposed to this historical memory, then, the contemporary performance of strong sovereignty provides crucial support to the Communist Party of China's (CPC) legitimacy claims. Examining the legal treatment of Western foreigners charged with crimes in China reveals the existence of a unique Chinese version of sovereignty that puts greater emphasis on de jure authority than de facto control. This understanding of Chinese sovereignty is discussed by Sow Keat Tok in his book *Managing Chinese Sovereignty in Hong Kong and Taiwan*, in which he describes Chinese sovereignty as "graded rings of authorities forming round a nominal, sovereign core ... embedded in a single, de jure sovereignty ... [where] the de facto component- or right of governance- is disaggregated and distributed across the different levels according to each relative position" (Tok, 162). This unique way of seeing sovereignty, which does not fit cleanly with Western notions of the concept, can be observed not only in territorial claims as Tok demonstrates, but also in the government's treatment of foreign individuals. The parallels between this area of bureaucracy and the Mainland's relationship with Hong Kong, Macao, and Taiwan, I argue, suggest that sovereignty itself may be understood and practiced differently in China than elsewhere. I further posit that in making sovereignty claims over foreigners and performing this power for international and domestic audiences, the Communist Party of China (CPC) leadership is constructing a historical memory, one that it is continually creating and propagating in an effort to bolster their own legitimacy. The selective use of foreign individuals as material in building this "memory project" bolsters the CPC's claim that it is capable of defending the country from foreign exploitation.

The international controversy that surrounded Akmal Shaikh, the first European citizen executed in China since 1951, saw a confluence of historical memories and modern politics. I will provide a brief summary of the relevant history, that of the Opium War and

extraterritoriality. I argue that understanding the “century of humiliation” during which stronger states denied the governments of China full sovereignty is crucial to analyzing modern Chinese sovereignty and to understanding why foreigners in China are such significant figures today. I will then briefly discuss how modern Chinese sovereignty is unique from other historical and contemporary interpretations of the concept, grounding my research in Tok’s work on graded rings of sovereignty. I will show how the Chinese government’s varying degrees of severity towards foreign criminals further support his model of core and peripheral areas of control. Finally, I will explain the government’s usage of foreigners as material to build their memory project. The purpose of this project, I argue, is to increase China’s international status and to bolster the CPC’s legitimacy claims amongst their own people. By unpacking these interconnected issues, I aim to shed light on the unique complexities of contemporary Chinese understandings and practices of sovereignty.

Chapter 2

Akmal Shaikh's Story

There is an unfortunate irony in the fact that the purported reason behind Akmal Shaikh's 2007 move to China was to record a song that he believed "would usher in world peace" ("Execution of Akmal Shaikh"). Not only was his singing career denied a chance to take off, he himself would become a flashpoint for heated debate between two global giants. Before his story came to an end in December of 2009, Britain and China clashed repeatedly over the handling of his case, a case which sparked major outrage and condemnation from the governments and people of both countries. Shaikh's execution came and went without either country taking any actions beyond strongly worded critiques of the other, but it took the efforts of both governments to prioritize their mutually beneficial trade relationship (Landreth) to prevent the very real possibility of escalation. While the leaders of Britain and China moved on, this case marked a significant moment in modern China's relationship with the Western world from which much can be learned about how the CPC leadership makes decisions and views the world.

Before he was a symbol of international debate, Shaikh was a man with a troubled past who had experienced repeated financial failure and had also run afoul of the law multiple times. After migrating with his parents to the United Kingdom from Pakistan as a child, he lived for a time in the United States and England working as an estate agent and a taxi business owner. Despite temporary success with his company, 'Teksi,' he fell into bankruptcy for a time in the 90s. He ultimately sold the business in 2004 after being convicted for sexual harassment against an employee- in their negative portrayals of Shaikh, Chinese media were prompt to inform readers of this fact, as well as the fact that he neither attended the tribunal hearings nor paid the wages and damages his employee was owed (Qiu). His marriage ended in divorce that year, with

Shaikh moving to Poland and marrying a Polish woman who had been his secretary in London. After increasingly erratic behavior this marriage too broke down, and Shaikh spent the last months of his life as a free man homeless in Poland, wanted by a Lublin court for failure to pay alimonies to his ex-wife and living off of handouts. It was during this time that Shaikh came up with the notion to become a singer (despite no prior experience or, according to those who helped him record a demo of his song “Come Little Rabbit,” any singing ability). In Poland, he met a man named Carlos who claimed to have contacts in the music business and convinced Shaikh to fly to Kyrgyzstan in pursuit of his dreams of becoming a singer. There he was met by Carlos’ contacts, including a man called Okole who said he owned a nightclub in China where Shaikh could perform. Together they traveled to Dushanbe, Tajikistan, and from there Shaikh believed they would continue on together to China. Before their scheduled flight to China’s western province of Xinjiang, Okole claimed that the plane no longer had enough seats for both of them, giving Shaikh a bag to take with him and saying that he’d come on the next flight. This is when, according to his defenders, the 51-year old Shaikh was unwittingly turned into a pawn for smugglers who had targeted him as a simpleton who could be used as a drug mule. Prior to the flight, these people had taken his passport and money (returning the passport before his flight), and despite the suspiciousness of this act and the request to carry Okole’s bag, Shaikh nonetheless took the flight to Xinjiang without contacting any authorities. After arriving at the airport in Urumqi he was stopped by Chinese police who took notice of Shaikh due to his anxious behavior. They performed a security check on him in the airport, and in a hidden compartment of the bag given to him by Okole, they found 4kg of heroin- Shaikh claimed no knowledge of these illegal drugs. When Okole failed to show on the following flight, Shaikh was

arrested. He spent the next two years as a prisoner of the Chinese state before being executed for this crime.

According to Chinese law, foreign nationals arrested within Chinese borders are to be treated and prosecuted the same as domestic criminals- however, the embassy of that person's country is to be promptly notified (Ministry of Public Security). In the case of Akmal Shaikh, Britain was not notified for an entire year (Townsend). His arrest took place less than a year prior to Beijing's much-anticipated 2008 Olympics, and with unwanted international attention already on sensitive issues such as the CPC's policies regarding Tibet and Taiwan, it is possible that this was a calculated decision meant to prevent further human rights criticism. In his first trial, held in November 2007 before his arrest was made known abroad, he was defended by Chen Dong, director of the government-funded Urumqi Legal Aid Center. Chen's defense was that Shaikh had committed the crime unaware, but the trial (which lasted only 30 minutes) ended with Shaikh being found guilty of smuggling illegal drugs into the country, a serious crime in China punishable by death (Qiu). Chinese law recommends the death penalty for smuggling heroin in excess of 50 grams, and Shaikh was carrying eighty times that amount. Ultimately, after two failed appeals, he was sentenced to death- the first European national to receive such a sentence since Antonio Riva, an Italian citizen found guilty of plotting to murder Mao Zedong (this plot was later admitted by government officials to have been fabricated), was executed in 1951 (Dikötter, 104). According to British media, it was only once the sentence had been made that Britain was finally notified of Shaikh's situation (Townsend). His conviction was upheld in a sequence of appeals, including the Supreme People's Court. This conviction sparked an international debate between two of the world's greatest powers at the very highest levels of government. Despite fervent efforts from both the British government and multiple non-

governmental organizations (NGOs) to alter his fate, the Chinese court's conviction was approved in multiple courts of appeals, including the Supreme People's Court, and Shaikh eventually met his end via lethal injection on December 29, 2009. Once his life was no longer rescuable, the same British politicians who denounced the ruling found it necessary to move on and put the unpleasant incident behind it for the sake of maintaining good relations with China. Besides numerous petitions to the Chinese ambassador in London and personal requests from Prime Minister Gordon Brown, Britain took no action in response to Shaikh's execution. Within months, his death passed from the public eye, seen by Britons as just another one of China's human rights abuses, albeit one that had a more personal sting. While Shaikh may be dead and his case no longer the sensational political hot issue that it was for over a year, it can provide us with valuable insights regarding China's sovereignty.

There are three main factors making Akmal Shaikh's case noteworthy. The first is that he was a Muslim of South Asian background, and his arrest and execution occurred in China's western Xinjiang province, which is a predominantly Muslim region that has experienced decades of unrest. Culturally, the local Uighur population (also spelled "Uyghur"- one of China's 55 ethnic minorities yet a majority in many parts of Xinjiang) is very different from the Han, who make up roughly 93% of China's total population (Worden, Savada, and Dolan). In Xinjiang, traditionally Muslim ethnic groups like the Kazakh, the Hui, and the Uighurs (who are the largest single ethnic group in the province) make up over half of the population (Worden, Savada, and Dolan). A recent influx of Han migrants and the anti-religious stance of the CPC have contributed to growing tensions in the region. One recent and dramatic example of this was the July 2009 riots that took place in Urumqi, where approximately 200 Uighur citizens were killed and many more arrested in the wake of largescale protests against government

mistreatment (Wikipedia contributors). China's official stance on the frequent ethnic conflicts ascribes blame to separatist movements which it has painted as akin to terrorist movements such as Al-Qaeda and ISIS. The fact that the majority of the people pushing for independence (or, in the case of many Uighurs, better economic conditions and more political autonomy) are Muslim has played into the government's hand, in that protesters of any issue can easily be labeled religious extremists. For Akmal Shaikh to be caught breaking a serious law in the capital of Xinjiang during a period of rising ethnic tensions, his identity as a non-Han Muslim certainly did him no favors.

The second factor that makes Shaikh's case worth examining, perhaps the one most responsible for making Akmal Shaikh a figure of global importance, was his British citizenship. Anytime a person commits a crime or is arrested in a country other than the one in which they hold citizenship, the matter evolves beyond a domestic issue. Oftentimes, the country where the crime has been committed will choose not to hand the accused over to their home country because they suspect that the punishment they would receive there would be less severe. This was certainly the case with Shaikh, as the death penalty is not even an extant procedure in Great Britain. From the mainstream Chinese point of view,² releasing him to Britain would have almost certainly resulted in a failure to properly punish a guilty criminal.

It is not unusual for the prosecuting and sentencing of a foreigner abroad to create tension between countries when the countrymen of the accused feel that they are not guilty. But rarely do such cases result in as much international disagreement and conflict as did Shaikh's case, and this is largely because of the third factor: Shaikh's mental health. The main argument of those who opposed his execution was that Shaikh was suffering from mental illness, and therefore

² As observed in online comments, and reported in government surveys and publications.

carrying out the death penalty on him would be a human rights violation, as per the 1997 UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (“Death Penalty and Mental Illness”). The claim that Shaikh was mentally ill, had it been proven, would have supported the defense used by his Chinese lawyers: that he was unaware of the drugs he was carrying, having been unwittingly chosen by smugglers who targeted him because his mental condition made him easy to exploit. Realizing after his first trial that the possibility of having the court recognize Shaikh as being mentally ill was his only chance to escape punishment, his new lawyers- Cao Hong and Qi Lei- attempted to have his mental health be tested. Shaikh himself was initially opposed to undergoing such a test, adamant that he was mentally fit, but ultimately conceded to his lawyers. This request however was not granted by the courts, meaning that in the eyes of the law, Shaikh was fully responsible for his crime. For the Chinese authorities, reports of “erratic behavior” by friends and family and guessed diagnoses from foreign doctors who never met him did not warrant further investigation (Jones). The fact that neither Shaikh nor any of his family members possessed medical records of mental illness was enough settle the issue, and so despite protests from abroad that more should have been done to determine Shaikh’s mental health, he was ultimately convicted as a man fully responsible for his crime.

Chapter 3

The Death Penalty and Rule of Law in Contemporary China

The uncertainty surrounding Shaikh's mental health would not have made his case exceptional were it not for his foreign citizenship. China has long been criticized for its extensive use of the death penalty- it is estimated that 99% of people arrested for a crime in China are found guilty (Congressional-Executive Commission on China), with thousands of criminals receiving capital punishment each year (Death Penalty Database, China). Despite the existence of laws meant to protect mentally ill criminals, the mental health of those convicted is rarely taken into account. A Chinese man convicted of murdering eleven people in gruesome fashion and seriously injuring two others was executed in Shaanxi in December of 2006, despite serious concerns from Chinese psychiatrists regarding his mental state (Ma and Zhu). Another Chinese man of questionable mental health, Yang Jia, was executed only a year and one month before Shaikh (Du). Sentenced for having killed six police officers with Molotov cocktails, Yang's attorney requested that he be examined for mental illness, but the request, like the one made by Shaikh's lawyer, was rejected. While cases such as these will usually result in condemnation from NGOs like Reprieve and Amnesty International, and sometimes even prompt cautious criticism from domestic voices, they do not evolve into issues of tense international debate. The reason Shaikh's case became such a debate is that his innocence (or at least, the potentially extenuating factor of his mental state) was being argued for not only by NGOs but by the government of Great Britain, which denounced the Chinese state's prosecution of their own citizen as be a miscarriage of justice. But it was the crucial factor that the British person being executed appeared to many to be mentally ill that fueled Britain's outrage. If Shaikh were a smuggler of undisputedly sound mental health, disappointment in his execution would likely

have been voiced by the British government, but it would have had to have recognized that China was in fact sentencing him in accord with its own laws, which clearly state that the death penalty can be expected for carrying over 50 grams of heroin into the country. There would have been no real ground for protest beyond the common refrain that China should abolish its death penalty, a request Chinese leaders have had no qualms in dismissing over the years, dismissively reminding their critics that other “developed” nations like Japan and the U.S. also use capital punishment (Miao). What British officials found unique in this case was the fact that China’s own laws clearly state that sufferers of severe mental illness cannot be sentenced with the death penalty (Criminal Law of the People’s Republic of China). The category of “severe mental illness” that can mitigate a defendant’s sentence according to Chinese law includes bipolar disorder (Ng, 424), which is what Shaikh’s defenders proposed he was afflicted with. However, this diagnosis was hypothesized solely on the conjecture of observers who had no opportunity to personally examine Shaikh, such as Dr. Peter Schaapveld, a British forensic psychiatrist consulted by Reprieve (Cohen). And so from the British perspective, it appeared as though Chinese courts were purposefully ignoring their own legal system in order to attain a guilty verdict for Shaikh. By calling for an overturning of his death sentence, Shaikh’s defenders portrayed themselves as trying to hold China accountable to its own laws.

This raises the issue of rule of law in China. Despite significant progress over the past four decades from the early years of the PRC when law was denounced as an instrument of class oppression (Minas), rule of law is still not a reality in contemporary China. An interesting anecdote that illustrates this was provided to me in a conversation with a Chinese professor of law. He told me about a time when he was consulted in a situation where a family whose money had been mishandled by a bank subsequently held the bank employees hostage. Even when

police arrived to mediate the situation and told them their losses would be redressed if they sued the bank in court, the family refused to leave. They were unconvinced that attempting to get their money back in court would be successful, reflecting a distrust of the judicial system that is widespread in China. The professor was asked to help resolve the situation by an officer who was a former student, and it turned out that the professor was related through marriage to one of the family members. As such, he was a valid member of their extended family, and was seen by them as trustworthy. When he repeated the police's advice that they would indeed win the court decision if they simply followed standard procedure and sued the bank, the family needed no further convincing. They left, and the conflict was resolved.

This incident shows the lack of faith Chinese citizens have in their own country's legal system. This distrust is not unwarranted, as connections often trump the law in China. Indeed, as the story continued, the professor mentioned to me that even if the judge who eventually presided over the case felt that the family did not deserve the reimbursement on legal grounds, the fact that the judge was one of his former students as well guaranteed the family victory in court, since he wouldn't pass a judgment like this against the family of his professor. Without rule of law, significant political decisions in China such as the executing of a foreign citizen around whom there is international debate can be understood as the realization of the desires of those in power instead of an unbiased application of existing laws. To confirm this, one only needs look at the manner in which Chinese media covered the case. In the immediate aftermath of Shaikh's execution, multiple official media organizations within China published articles in strong defense of the courts' decision. Xinhua published an article providing testimonies from multiple Chinese legal experts in support of the ruling- the very title of the article declared the

execution to be “lawful and reasonable” (Miao)³. The article goes on to state that the Supreme People’s Court was correct in asserting that the British opposition to Shaikh’s execution did not provide enough evidence to support the notion that Shaikh was mentally ill, and thus by executing him, the Chinese government was both staying true to the law and standing strong against foreign pressure (Miao). A few days after this article, Sina, another major news organization tightly controlled by the government, published a lengthy article detailing Shaikh’s life story, his arrest and subsequent trials, as well as reaffirming the appropriateness of his sentence. Officials working within the Urumqi court system who interacted with Shaikh during his two years in prison were quoted as saying “his behavior was very normal”⁴ in denial of suggestions that Shaikh was mentally ill (Qiu). The strong defense of the courts’ decision found in these and other Chinese news articles are reliable confirmation that the execution was approved of by Party leadership, as “media transmissions about law carry a great deal of authoritative weight” (Lee, 438). Tahirih V. Lee’s research on the usage of official news outlets by the Chinese government shows that “the media transmissions of stories and interpretations of the law rank second only to Supreme People’s Court opinions” (Lee, 480). She concludes that to an extent, “media transmissions in the PRC function as sources of law” (Lee, 480). We can therefore interpret the media coverage of Shaikh’s execution, which was strongly affirmed the decision, as an accurate reflection of the will of Party leadership.

³ In the original Chinese: “*he fa he li* 合法合理.” Unless otherwise noted, all translations from Chinese to English are my own.

⁴ In the original Chinese: “*ta de juzhi hen zhengchang* 他的举止很正常.”

Chapter 4

The Historical Memories Shaping Chinese Views of Akmal Shaikh

This leads us to the question of why China's leaders would want to execute Akmal Shaikh. If China's own laws regarding the mental health of criminals allowed for at least the chance of a lighter sentence, in favor of which there was considerable international pressure, and if the law itself can be bypassed, then why did China endanger its important trade relationship with Britain and risk attracting more critiques of its human rights policy over one man? The answer, I argue, is that for the Chinese government and the Chinese people, Akmal Shaikh was not just any man- rather, he represented the nation of Great Britain, along with its past crimes against China. For observers familiar with Chinese history, Shaikh's case had strong echoes of the Opium Wars of the 19th century. These echoes were quickly seized upon by the Chinese public and repeatedly broadcast by the state-run media. A failure to understand this history and its impact on modern China would be to completely miss the significance of this case for the Chinese people. By seeing Akmal Shaikh's case from the Chinese perspective, I argue we can understand that they viewed the issue as a challenge to China's sovereignty and national honor. Instead of being a stand-alone case, Shaikh's was framed within China as the latest in a long line of instances where Britain had tried to impose its way on China.

This history into which Shaikh's case fit so neatly goes back to the First Opium War, "the traumatic inauguration of [China's] modern history," when the British used their military superiority to force the Qing Empire to concede to their demands for greater economic cooperation and diplomatic rights, among other conditions that the Chinese found

disadvantageous (Lovell, 9).⁵ This conflict marked the beginning of China's "century of humiliation," the period lasting up until the end of China's civil war in 1949 during which numerous wars, rebellions, and other calamities caused millions of deaths, as well as a long-lasting breakdown in political order. A significant aspect of the "century of humiliation" is extraterritoriality, the judicial system instituted by the Treaty of the Bogue that exempted British citizens from Chinese law for over a century. General Regulation XIII of the Treaty of the Bogue declares: "Regarding the punishment of English criminals, the English Government will enact the laws necessary to attain that end, and the Consul will be empowered to put them in force; and regarding the punishment of Chinese criminals, these will be tried and punished by their own laws" (Treaty of the Bogue). While it has been over seventy years since British extraterritoriality in China ended, the strongly negative reactions to British attempts to save Shaikh show how its memory still plays a role in contemporary politics.

Extraterritoriality, or "extrality" as it is commonly abbreviated by contemporary scholars, is defined by Turan Kayaoglu as "a legal regime whereby a state claims exclusive jurisdiction over its citizens in another state" (Kayaoglu, 9). It is worth drawing attention to how closely this definition aligns with the concept of legal imperialism, which Kayaoglu summarizes as "the extension of a state's legal authority into another state and limitation of legal authority of the target state over issues that may affect people, commercial interest, and security of the imperial state" (Kayaoglu, 6). While China was never officially colonized during the 19th century, it was undeniably a target and victim of the imperialist appetites of Europeans and the Japanese throughout the "century of humiliation." And systems of extrality were one of the main tools of imperialism, as its existence legitimizes the superiority of the former state's legal system while

⁵ For a detailed account of the First Opium War, see: Lovell, Julia. *The Opium War*. London: Picador, 2011.

allowing for the society of the target state to be influenced by ideas and rules from abroad. In the decades between the First Opium War and the beginning of the 20th century, the Qing Dynasty went from having no official systems of extrality to having conceded the privilege to nearly two-dozen foreign countries, including powers such as Britain, France, and Japan, but also relatively weaker states like Norway and Brazil that would certainly have not been able to attain such a privilege were it not for the work of other stronger states setting a precedent of foreigners being exempt from Chinese law.⁶ As a result of these concessions, unwanted foreign products and ideas began flooding into China, and the foreigners responsible for these new and combusive imports were outside the reach of Chinese law.

While the European justification for imposing systems of extrality upon China was ostensibly innocent enough- the protection of their own citizens from what they considered to be “barbaric” punishments and abuses of the law- the result was undeniably exploitative of China. On the economic level it gave European nations a trade advantage by allowing them to proceed with commercial activity that China’s rulers disapproved of, such as opium importation. Their traders now enjoyed a much more favorable position than they had previously experienced under the Ming and early Qing. Without the fear of being unfairly subjected to what they saw as cruel and unusual punishments, more foreign merchants found doing business in China to be an agreeable pursuit, and so they increased in number (as did Christian missionaries) and spread across the empire. Furthermore, those merchants now found themselves possessing an elite status in Chinese society. Pre-extrality foreigners had to be kept on a tight leash by their superiors lest they get in trouble (through their own fault or by accident) and cause yet another struggle with

⁶ For more information regarding the history of extrality, consult: Edwards, Randle R. “Ch’ing Legal Jurisdiction Over Foreigners.” In *Essays on China’s Legal Tradition*, edited by Jerome Alan Cohen, R. Randle Edwards, and Fu-mei Chang Chen, 222-268. Princeton: Princeton University Press, 1981. Also see: Scully, Eileen P. *Bargaining with the State from Afar*. New York: Columbia University Press, 2001.

the Qing officials, and they knew that while there was the possibility of them being saved from Chinese punishment, this was by no means certain. Whereas with systems of extrality in place, foreigners could now roam the land (the unequal treaties made it possible for foreigners to penetrate the once-prohibited Chinese interior) with relative impunity, knowing that their government would provide them favorable treatment were they to get into trouble. This is not to say that Western governments encouraged or even tolerated misbehavior by their subjects in China- extraterritorial courts in China saw the privilege of dealing with their own citizens as a burden in of itself and tried to prevent them from causing trouble (Scully, 44). But Western citizens certainly enjoyed a change of status through this legislation. Extrality effectively transformed them from lowly outsiders who could run and hide from the law, to empowered bodily representatives of their militarily superior homelands. Not only did extrality elevate foreign individuals to a superior position in China, it also constituted a serious attack on Chinese sovereignty. The Qing officials who agreed to the terms of extrality were unaware of this deeper violation, but it is where the true significance of extrality lies and it is why sovereignty in China today is such an intensely guarded right.

There are few words in the science of foreign policy that are more commonly used and yet more often oversimplified and misunderstood as “sovereignty.” It is simultaneously “the fundamental principle of international politics” (Tok, 6) without which our contemporary world system would fall apart, and yet also “an *essentially contestable concept*”⁷ (Besson, 5) that no state can put into perfect practice (Tok, 27). Indeed, while many politicians assume that the word is understood to have the same meaning for all people, it is “an ever-changing concept” whose “very definition and interpretation shifts with the contexts it applies to, as well as the historical

⁷ Italics in original.

period in which it was defined” (Tok, 23). Not only has the concept changed over time, sovereignty is also understood in different ways by different contemporary governments.⁸ At their most basic level, contemporary notions of sovereignty share the assertion that it is power (often imbued with a sense of a right to that power) held by a governing body to make decisions on nearly any aspect of the lives of the individual members of that body- indeed, it is “is the power of life and death” in the hands of the state (Kahn, 4). Alexander William Salter calls it “an individual or body party to political exchange that does not rest on third-party enforcement” (Salter, 79). And Carl Schmitt posited that the sovereign is “he who decides on the exception” (Schmitt, 5), which is particularly apt if we interpret the Chinese courts’ refusal to consider Shaikh’s mental health as a decision to deviate from standard legal procedure.

While the details and limits of these criteria are contested by academics and governments alike (and I will explore later how sovereignty as understood by contemporary Chinese leaders is unique), most work from this shared foundation, a foundation that was being formed in the 19th century. As heir and participants in the culture of European Christendom that produced this broad concept of sovereignty, British merchants and diplomats carried a specific worldview into 19th century Asia, expecting the rulers they encountered to accept their view of the world and challenging those that resisted. Certainly people in the Qing Empire of 1839 held a very different view of state power and authority than did the British at the time the two countries clashed over the right to ban or import opium. Entering the 19th century, Chinese rulers did not make clear distinctions between the various European states who were expanding their own empires up to China’s doorstep. Nor did they consider any other state in the world China’s equal, in terms not

⁸ For an discussion of sovereignty as a social construct and process, see: Biersteker, Thomas J., and Cynthia Weber. “The Social Construction of State Sovereignty.” *State Sovereignty as Social Construct*. Ed. Thomas J. Biersteker and Cynthia Weber. Cambridge: Cambridge University Press, 1996. 1-21.

only of power but also essence. This was a reflection of the *tianxia* (天下) system, which was the dominant cultural understanding of the world in China from ancient times into the early modern period. This system was different from contemporary European understandings of the world in that the structure was not founded on absolute control over territory, but on “the moral and cultural superiority of the Chinese civilisation” (Tok, 36). Despite being a way of understanding sovereignty, it was not as concerned with territorial boundaries as European sovereignty was, as all lands were in theory at least under the emperor’s authority. One other significant difference was that besides China, “there were no parallel supreme authorities possible” (Tok 36), meaning that the early British attempts to negotiate as equals were interpreted by the Qing rulers as misguided and audacious. The British who encountered the *tianxia* system found the Chinese insistence on their innate superiority similarly audacious, especially once it became clear that the Chinese state lacked the military strength to vindicate that sense of sovereignty. After this vision of the world was shaken by China’s comprehensive military defeat to England in the First Opium War, Chinese leaders and thinkers spent the decades leading to the eventual Qing collapse in the study of European political literature, through which they adopted this foreign concept of sovereignty. Over twenty years after the end of the First Opium War, a full Chinese translation of Henry Wheaton’s *Elements of International Law* published as *wanguo gongfa* (万国公法) was completed and thus Qing officials (who had been studying translated sections of the text since the 1850s) could gain a clearer sense of the details of this new system (Tok, 40). Even with such translation projects, processing an entirely new foreign view of the world was a gradual process. When Chinese officials tortured and killed members of British diplomatic envoy Harry Parkes’ entourage (in blatant violation of European norms for how diplomats were to be treated) during the Second Opium War, Anglo-French troops retaliated by burning and looting the

Yuanmingyuan (圆明园, “Gardens of Perfect Brightness,” now known as the Old Summer Palace). As seen in this and other episodes from the late 19th century, European nations had the will to force their norms upon China as well as the power to punish deviations from those norms. In the final years of the Qing Dynasty and throughout the Republican Period, Chinese officials used this somber motivation and their ever-increasing knowledge about the world outside their borders to operate within the same international framework as Europe and Japan.

One of the greatest motivating factors in this process of change was the desire to remove the systems of extrality that had been imposed upon China through humiliating military and diplomatic defeats. Beyond the economic and social advantages that extrality gave Westerners, extrality also set a stark power dichotomy in place between China and the Western states managing the systems. China’s leaders could be bossed around by foreign rulers who tested the limits of their power by making increasingly invasive demands upon them and denying them the right to apply their own laws within their own borders. The more that Chinese scholars and officials learned about the European view of the world and their concept of sovereignty, the clearer it became that extrality was effectively a denial of China’s right to exercise sovereignty. Sovereignty exists where there are “at least two supreme authorities sharing a clear, enforced border between them,” a border “dividing the internal from the external” (Tok, 30). Extrality violates that border. With the privilege of legal immunity from Chinese law, foreigners protected under systems of extrality showed that the Chinese state did not have complete authority over its own territory and thus blurred the line between internal and external. And for sovereignty to be denied to China was a serious statement by the governments behind extrality on the inferiority of

the Chinese state and legal system.⁹ As long as extrality existed, China did not have full sovereignty over its territory. Adding insult to injury was the fact that China lacked sovereignty because other states determined that China was not deserving of it (like Japan proved itself to be only four decades after encountering those same states). This judgment of inferiority is a major part of the “century of humiliation,” one that the PRC since its founding has striven to compensate for, as I will discuss further on.

Japan’s success in getting rid of their systems of extrality in 1894¹⁰ through the major systematic changes that constituted the Meiji Restoration showed Chinese policymakers that by making adjustments to fit Western norms, freedom from extrality was possible. With that freedom came full sovereignty and equality (or something approaching it) in the international system, with which came the coveted ability to resist foreign aggression and influence. And so Chinese continually fought against the extrality systems imposed upon them with “a vehement and occasionally violent” opposition that ranged from public protests to diplomatic tug-of-wars (Kayaoglu, 149). Early efforts by the Qing government to convince Western nations of the need to end extrality included attempts to point out its ineffectiveness in maintaining control of foreigners in China. Somewhat ironically, these protests were met not with extrality’s abolition, but rather a bolstering of its reach, such as in the U.S. Court for China Act of 1906, which only intensified American control over its citizens in China and made the extrality court system more similar to the American system (Kayaoglu, 152). The Qing rulers then focused on legal reform. Since the original Western desire for extrality arose from a sense that China’s laws were unfair and not properly institutionalized, and that this judgment of China’s “backwardness” remained

⁹ Some schools of international relations such as the realist school even consider sovereignty “the fundamental principle of international politics” (Tok, 6) without which a state is not a true state.

¹⁰ These agreements would not take effect until five years later

the justification for the propitiation of the systems, the perception developed among China's leaders that they could bring about an end to extrality by correcting the aspects of their legal system that the Western nations considered problematic. An example of this can be seen when in redrafting the Qing Code in 1907, the repealing of certain laws (such as the law criminalizing female fornication) was proposed, due to a recognition that Western countries lacked similar laws, and therefore by eliminating laws that were frowned upon in the West China could gain a stamp of approval and prove that extrality was no longer needed (Yeung, 303). Such acts were encouraged by the British themselves. The Mackay Treaty of 1902 promised that "Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other conditions warrant her in doing so" (Kayaoglu, 153). The seemingly kindhearted attitude expressed in this statement obscures the reality that China's sovereignty was still very much in the hands of people outside of its own borders with interests contrary to those of the Chinese. It would be for Great Britain, and all other nations who enjoyed extrality in China, to decide exactly when China met their vague standards.

Ironically, the long-awaited end to extrality eventually occurred at a time when Chinese opposition to it was at its least vocal- the early 1940s, an entire century after the first system of extrality was set into place by the British. Opposition was subdued because the country was gripped by both civil war and fighting the Japanese invasion that had torn the country apart and made the normal functioning of courts almost impossible, and the priority for Chinese leaders was simply survival. Scholars have theorized as to why Britain and the US chose this time to end their systems of extrality. Kayaoglu places the greatest explanatory power on the systemic legal changes that had taken place during the 1930s in KMT-controlled China. He argues that the legal

reforms that had been implemented by the early 1940's successfully provided the institutionalized "modern" legality that was expected of nations at the time (Kayaoglu, 186). With this interpretation, it would seem as though British officials, deeming that China's legal system had been sufficiently modeled in its own image, were content to relinquish their privileges since there were no longer serious enough differences to justify maintaining them. Others have interpreted the act somewhat more cynically, reading it as a response to Japanese war propaganda in China that argued that the Allies were imperialists and extrality proved this. Removing extrality was therefore a measure taken to prevent the loss of Chinese support in the war.¹¹ Another factor that is important to consider is the Allies' desire for a strong post-war China that could help block Soviet influences in Asia.¹² Whatever the actual reason, both Britain and America notified Chiang Kai-shek's government of their decision to end extrality in October of 1942, on the condition that China would continue to develop its legal system in the same institutionalizing direction, and provide the Allies with favorable economic treatment. Within three years, WWII had ended and the victorious Allies aimed to continue molding the world in their own image. This mission gained added momentum from the efforts of the Soviet Union to spread its own ideology. Over the next half-century, Britain, America, and their allies would portray themselves as defenders of liberty, selflessly fighting for the right of small countries to be free from the interference of those (the Soviets) that would meddle in internal affairs. The irony here of course is that they were not innocent of such meddling, as seen most blatantly in Vietnam and Korea, as well as in the post-war occupation of Japan and West Germany. This irony was not lost on the Chinese. Soon after extrality was ended in China, Mao Zedong's victorious Chinese Communist Party (the CCP, now called the Communist Party of China, or the

¹¹ Kayaoglu looks at these and other interpretations in *Legal Imperialism*, pages 179-190.

¹² Michael B. Yahuda gives a good summary of this factor in *The International Politics of the Asia-Pacific* (1996).

CPC), established the People's Republic of China in 1949. From its beginnings in the 1920s, the CPC positioned itself against extrality and attacked the KMT for its reliance on the very countries that were denying China its sovereignty. To the CPC, Britain and America remained imperialists, even during the 1930s when they found themselves grudgingly working together to fight the more pertinent enemy of the Japanese. The removal of extrality did nothing to change this view. When Mao Zedong proclaimed "We have stood up," he was communicating to the world that China's new government would not allow itself to be subjected to the impositions of foreign governments (Wang, 84). Non-communist foreign governments were repeatedly denounced in official speeches and demonstrations. While the last of the foreign extrality systems had ended before the founding of the PRC, "Western imperialism" remained a useful enemy on which to blame China's impoverished state and against which to mobilize Mao's policies. It was a useful enemy, because frustration remained over the exploitative policies that foreign governments had imposed on China for a century. I argue that Chinese frustration at this century-long history of extrality- its violent beginning and degrading end, as well as the manipulative nature of the whole process- is still used by the government as a means of consolidating public support of the CPC. In instances like Akmal Shaikh's execution where foreign governments critique Chinese policy, the government is quick to frame the issue as a continuation of imperialist attempts to bully China. First, however, a brief overview of the unique contemporary Chinese interpretation of sovereignty is necessary.

Chapter 5

Contemporary Chinese Sovereignty

As previously mentioned, the definition of sovereignty varies from country to country. No one country's understanding of the concept can be called the definitive version, as it is very much a construct subject to change as thinkers and politicians continually redefine what it means. One area in which much mutation has occurred over the past century is in determining how much control the governing body should have over the people under its authority. Historically, the treatment of a people by their government mattered little- oppressive regimes were the norm, and human rights issues would not become the global issue that it is today until after WWII. Up to that point, human rights had been growing as a topic of debate: at the turn of the last century, publicized accounts of human rights abuses in the Belgian Congo were met with widespread condemnation, and the political actions that followed were arguably the first human rights protest, as well as one of the first times that political discussion centered around a state's treatment of its own people. But following the horrors of the Holocaust that came to light following WWII and showed the devastation that could be wrought by an oppressive modern regime, the Allies responsible for shaping the post-war order began treating the issue of human rights as a serious issue. The idea of "crimes against humanity" was introduced in the Nuremberg War Crimes Trials of 1945, and by condemning Nazi Germany's human rights violations, the victorious Allies not only further justified their own actions in the war- they also set a precedent for the importance of human individuals in contrast with the state, a precedent that would be set into international law in the United Nations' Universal Declaration of Human Rights (Department of State). This list of rights, adopted by the U.N. General Assembly in 1948, established that human rights abuses would henceforth be treated as "a matter of legitimate international concern"

(Department of State). While there still exist regimes such as Burma and North Korea that systematically violate international human rights norms, they are now the exception, and much pressure is put on such regimes to change their ways. These values are reflected in how sovereignty is understood in Britain and America. In these countries, there has been a development in the past couple decades for “more expansive exceptions to state sovereignty” (Burke-White, 50), with the rights of individuals becoming more important.

In contrast, the Chinese government holds claim to “a more absolutist sovereignty” (Burke-White, 50), where the authority of the state over the people within its territory extends over nearly every aspect of life, and mainstream Chinese political thinking on the subject aligns closely with this idea.¹³ Multiple generations of Chinese leaders have responded to Western critiques of China’s human rights’ abuses by emphasizing the “master-slave” role of sovereignty and human rights (Tok, 63), stating that a lack of complete sovereignty will lead to chaos, which will then result in severe suffering. Therefore, what are perceived abroad as human rights abuses are in fact (from the CPC’s point of view), necessary lesser evils that are ensuring the success of the nation and preventing the far greater suffering that would result from abiding by international human rights standards. A well-known example of this is the government’s population regulation, because of which untold millions of women have had forced abortions and sterilization procedures performed on them in clear violation of international human rights norms (“The right to choose and refuse sterilization”) This however, has been justified by the state as the necessary cost of preventing overpopulation- the CPC credits the policy as having prevented 400 million births- which according to Chinese scientists (relying upon the largely discredited work of Paul Ehrlich), would cause far more harm in the long run than the government’s course of action

¹³ Tok provides an overview of Chinese academic discussion on the concept of sovereignty in *Managing China’s Sovereignty*, pages 63-64

(Pandit). In the fall of 2015, much was made of the government's decision to finally end the "One-Child" policy that had, since the late 70s, made it illegal for couples to have more than a single child (with exceptions) and punished with fines and forced sterilization those who did. While on the surface, the change seems to be a relinquishing of power by the state, the government still lays absolute authority over the reproductive rights of its people, an authority that extends so far as to be able to deny people the ability to bear children through forced medical procedures. Allowing two children instead of one is in no ways a renunciation of that power. In addition to people's reproductive rights, the government also lays claim to the land people live on, frequently going so far as to forcibly remove residents from their homes and relocating them against their will. In Britain or America, such an action by the state would be loudly decried as a violation of the people's rights by the government, but in China, it is the vested power of the government to do these things, and any attempts by foreign countries to criticize this situation is strongly resisted by the Chinese government. Even individuals within China who push for more individual liberties are frequently denounced as working in tandem with foreign governments to violate China's sovereign authority over its people. Both in government practice and in academic discourse about sovereignty in China, the prevalent notion is that "the right to sovereignty is a right in itself ... [that] should never be questioned nor denied, and should be defended at all cost" (Tok, 59). This challenges the popular notion in the West that globalization is making the traditional concept of sovereignty obsolete (Tok, 62).

The authority claimed by the PRC government over its citizens pushes the limits of contemporary Western norms not only in its thoroughness, but also in its claims over Chinese outside of the Mainland. This was seen recently in the disappearances of five Hong Kong book publishers in October and December of 2015, who were widely interpreted to have been

abducted by PRC police for publishing gossip books that portrayed the CPC leadership in a negative light (Forsythe and Jacobs). Such activities are legally protected in Hong Kong, where the British-crafted government “has evolved to capture very different values, encompass a very different legislative/executive structure and operate within an alien legal system different from that in the Mainland” (Tok, 1). This is why the development was so shocking- it was an action that both violated Hong Kong’s sovereignty and claimed more authority over Hong Kong for the Mainland than is reflected in the legal agreement between the two (or at least, more than those upset by the Mainland’s actions interpret the law as allowing). While the Mainland government did not openly admit to having abducted the five from outside of China’s borders, the lack of alternative explanations as well as the trend of increasing Mainland control over Hong Kong (as protested in the Umbrella Protests) convey a unique Mainland interpretation to the “One Country, Two Systems” agreement, one where interference is acceptable despite being outside of the law. Said agreement is supposed to allow Hong Kong to continue governing itself by its own laws and government. The Mainland’s relationship with Taiwan is even more problematic: while Hong Kong was officially returned to the PRC in 1997, Taiwan (or the Republic of China) and the PRC have not succeeded to reach an agreement regarding their relationship since the ROC government retreated to Taiwan in 1949. Despite de jure recognition from less than two dozen states, most of them quite small, Taiwan effectively functions as an independent state completely separate from the Mainland (Friedman, 4).

What may appear to be a violation of Hong Kong’s legal independence actually fits within the notion of sovereignty claimed by China. A “persistent peculiarity” found in China’s constitution is its claim of the responsibility to “protect the rights and interests of overseas Chinese” (Tok, 85). This belief was reflected in a statement by the Ministry of Education made

in January of 2016 and publicized the following month calling for an increase in “patriotic education”¹⁴ for overseas Chinese citizens, including students at foreign campuses (Ministry of Education). The statement expresses an official desire for a network of overseas Chinese that can help individuals “deeply feel the love and concern of the Motherland”¹⁵ (Ministry of Education). This “love and concern” can sometimes take a more sinister tone, as seen in the government’s monitoring of overseas Uighurs, the Muslim ethnic minority native to the province of Xinjiang where Shaikh was arrested and executed. Through spies, blackmail, and the coercion of family members back home, China’s intelligence service maintains a close watch over Uighur communities abroad, sensitive to their potential as rallying points for separatist movements (Mooney and Lague). Being outside of the Mainland’s borders does little to diminish the sense of China’s wide reach of sovereignty for the subjects of this intelligence campaign such as Kayum, Masimov, president of the Uyghur Canadian Society, who is quoted as saying: “Some might think that once you flee China, you are free. But you are never free” (Mooney and Lague). Clearly for the Chinese government, sovereignty is not entirely determined by territorial boundaries- whether in Hong Kong, Taiwan, or abroad, individuals deemed “Chinese” are at least to some degree perceived as being under the ultimate authority of the CPC.

In understanding China’s contemporary idea of sovereignty, I have shown that it asserts extreme control over individuals that it deems to be under its authority, and that it does not equate territorial borders with an end of control. However, China’s version of sovereignty is not simply a matter of “more control,” nor does it fit cleanly within Western expectations of what “absolute” sovereignty should look like. Indeed, while many have attempted to neatly classify China’s interpretation of sovereignty as “Victorian” or “Westphalian” (given the fact that its

¹⁴ In the original Chinese: “*aiguo zhuyi jiaoyu* 爱国主义教育.”

¹⁵ In the original Chinese: “*chongfen ganshou zuguo guan ai* 充分感受祖国关爱.”

extensive claims of control better resemble Western notions of sovereignty from the 19th century or before) such labels and even calling it an “absolutist” interpretation are misleading (Tok, 2).

While the Chinese government shows a tendency to resist new interpretations of sovereignty that have been trending in the West for decades (ex: individual liberty, increased role of supranational organizations), its interpretation nevertheless differs significantly from 19th century European conceptions or even those of states similar to it like Russia, and not just in its claim of overseas Chinese. Just as European historical struggles with the Church produced the versions of sovereignty most common in the West, China’s history has shaped modern Chinese views of sovereignty and the international order. According to Tok, the *tianxia* system that guided Chinese notions of the world for millennia was not fully eradicated despite the fall of the Qing Dynasty and the influx of Western thinking over the past century and a half. Even with the efforts of officials to adopt the new Western understanding of the world system, processing an entirely new foreign view of the world was a gradual process. Old ideas of the world as understood in the *tianxia* system did not disappear overnight. Nor did they suddenly die out as soon as the old empire was replaced by a new modern republic. Tok argues that aspects of the *tianxia* system survived through the structural overhaul of the Republican era and through the anti-traditionalist purges of the PRC, and even “remains an important mind-map even for the politics of China today” (Tok, 46). Using Raymond Williams’ theory of dominant, residual, and emergent subcultures, Tok reasons that *tianxia* conceptions of the world, while no longer part of the dominant culture, have nevertheless remained present in the level of residual culture (Tok, 45). He defends this claim by exploring the unique aspects of China’s understanding of sovereignty as it pertains to its relationship with Taiwan and Hong Kong, showing how the PRC’s seemingly contradictory claim that these functionally-independent regions are in fact

under its authority mirrors the bold claims of premodern emperors who saw themselves as holding sovereignty (in a sense different from how it is currently understood) over all of human existence. Their rule was absolute in their claims of sovereignty- literally “all under Heaven” was seen as under their authority- but in reality, application of this power was inconsistent and incomplete, especially as one moved outwards from the capital where the emperor’s power was most clearly vested. In these peripheral areas, acknowledgement of the center’s ultimate authority was more important than actual control (Tok, 35). What this means is that under the *tianxia* system, a high degree of autonomy in a region deemed peripheral by the center was acceptable, as long as the ideological authority of the center was not threatened by this autonomy.

While a Western framework of international relations has become dominant in Chinese politics today, ideas of the *tianxia* system have remained in the consciousness of Chinese policymakers, not in the sense that they believe China is located at the center of the world, but in the sense that areas or peoples determined to be “peripheral” by the central government can be allowed a greater degree of autonomy, as long as they still pay homage to the ultimate authority vested in the center. We can understand this as “graded rings of sovereignty”: control “cascades outwards” from the core, where the central government’s control is strongest, through the second tier to the third tier- the periphery- where control is more nominal than actual (Tok, 3). Moving outwards from the center, de facto sovereignty becomes less important as long as de jure sovereignty remains unchallenged. Hong Kong is within the peripheral ring of Chinese sovereignty, in that its government and economy are allowed to operate mostly free of Mainland control (although lately there have been more political restrictions). Taiwan exists even further out on the peripheral ring, in that it has complete de facto sovereignty- while in Hong Kong, the Mainland government works with the local government, the Taiwanese government operates

completely independent of the Mainland. However, due to the Mainland government's insistence that Taiwan is a "renegade state" (Friedman, 4) rather than an independent country (despite effectively existing as a de facto sovereign nation since 1949), any attempts to label Taiwan a separate nation are met with strong response from the Mainland.¹⁶ Meanwhile, acts that in practice clearly show Taiwan's de facto independence, such as the regulation of immigrants from the Mainland in a manner that mirrors the immigration management of sovereign states, are tolerated as long as there is no challenge to Beijing's de jure sovereignty (Friedman, 30). In her interviews with Taiwanese immigration officers, Friedman observed in her interviewees a strong desire to put a Taiwanese stamp on the passports of people coming from the Mainland, as the act of putting a stamp on a passport affirms the sovereignty of the stamping authority. Doing so would not alter the status quo proceedings, but it would nonetheless be a denial of Beijing's de jure sovereignty. This simple act "weighted with significant import" is therefore off-limits to the Taiwanese bureaucrats who wish to assert their country's independence (Friedman, 28).

In explaining this unique situation, where de jure sovereignty does not match de facto realities, Tok highlights the adaptability of the Chinese approach. As long as the idea the central government possesses ultimate sovereignty is not challenged, de facto independence is acceptable. In this way, the Mainland government "flexibly accommodates, and at times, voluntarily concedes, a different mix of de facto rights according to each respective context and issue" (Tok, 3). Given the convenience afforded by maintaining graded rings of sovereignty, it may be that the process of gravitating towards a version of sovereignty that shares similarities with the older *tianxia* system was less an inheriting of historical tradition and more a strategic

¹⁶ One of the most dramatic examples of this was the Third Taiwan Strait Crisis in 1995-96, where interaction between Taiwan and the U.S. implying Taiwanese de jure sovereignty prompted Chinese leadership to conduct missile tests in close proximity to Taiwan in a statement of its authority over Taiwan.

choice by CPC leadership, who found themselves in a difficult situation and discovered a way to tolerate it by using the international relations theory of an older era. Regardless of which explanation is truer, it is more germane for the discussion of the legal treatment of foreigners in China to find an answer to the question: why does the government concede some rights and refuse to compromise on others? Why are government officials comfortable with Hong Kong managing its own economy, a large amount of freedom, but is at the same time so uncomfortable with a publishing company slandering Xi Jinping that they deny five Hong Kong citizens (one of whom had dual Swedish citizenship) their legal right to publish freely? Why is Taiwan's de facto independence from Mainland control tolerated, but the small action of putting a stamp on a passport is considered taboo? The answer lies in the PRC's leaders' desire to preserve their appearance of authority, both for other countries and for the Chinese public. This appearance-maintained through performances of sovereignty- is crucial in the CPC's ongoing quest to maintain its legitimacy. Furthermore, the importance of this appearance helps explain why some cases involving foreign criminals are treated more severely than others.

Chapter 6

Performances of Sovereignty: For Status and Stability

In his book *China's Struggle for Status*, Yong Deng argues that “international status” is a “major goal of foreign policy” for the PRC, a goal that is related to sheer military and political power and yet also distinct (Deng, 1). The very concept of status is loose and inexact: even though it is frequently used and referred to in Chinese politics and academia, it suffers from “scanty analysis” within China, perhaps due to its sensitive nature (Deng, 12-13). After all, if a Chinese scholar were to define “status” as anything contrary to government policy or beyond the reach of the PRC under the CPC, it could result in negative scrutiny. For the purposes of this article, we can understand the concept as a broad notion held by other countries’ leaders (and to a lesser extent, their people) regarding China’s right as a developed state to wield influence matching its power on the global stage. Part of this fixation has to do with the feeling within China that due to the long and rich cultural history of the Chinese people, anything less than regional power status is below what China deserves (Deng, 8). Considering that China existed as the dominant political power in East Asia for over two millennia, domestic scholarly interpretations of China’s recent rise to prominence on the world stage see this development as a return to normalcy. The “century of humiliation” which has so deeply affected the identity of the modern Chinese nation is therefore interpreted as a lengthy fluke that needs to be redressed, and a large part of that task is regaining status. It goes beyond economic or military power however—in both areas, China is far stronger than those of some of the G8 nations, but as it has only recently transitioned from the global periphery to the center, there remains a sense that China must prove itself. It is still “a non-status quo power, insofar as it must *react* to the international hierarchy” (Deng, 29). China is currently a rising power that nonetheless remains an outsider in

the “Western-dominated international hierarchy, which is buttressed by the U.S. hegemony,” and consequently its leaders have recognized the need for acceptance by the “in-group” of Western democracies (Deng, 2). Without such acceptance, Chinese leaders fear that their country will be vulnerable to exploitation as it had been for so long. If America does not recognize China’s dominant place in East Asia, it will continue to manipulate politics in the region for its own interests. If China’s neighbors do not recognize it as the Asian country with the highest status, they might be emboldened to challenge China’s claims of sovereignty, as Vietnam occasionally has in the South China Sea. Historical memory of nearly a century of existing as a semi-colonial state has ensured that the Chinese will not forget the danger of being bullied by other countries. The country’s newfound power can help prevent that, but the recognition that others still make the rules means that China must show that it is strong. And so the goal is not just military and economic strength, but also status as a country that can help make the rules in the international system.

Connected to the CPC’s quest to gain international respect is their quest to also maintain legitimacy in the eyes of the people. As an authoritarian government that had to wrest power violently away from the ruling party, the KMT, in a long and bloody civil war, legitimacy has always been a major concern for the CPC. For the first three decades of the PRC’s existence, it justified its rule as bringing about the revolution called for by Maoist communism. But in the wake of Deng Xiaoping’s reforms that changed China’s economy from a socialist system to a much more capitalist system, communism essentially lost its use as an ideology that could mobilize the public (Waldron). In its place, nationalism has been pushed by the government as a substitute ideology, but it is widely recognized that the true support for the CPC comes from the economic success it has brought the country. The CPC can continue its rule as the legitimate

governing party as long as the nation keeps profiting and gaining in status (the two of course are connected- the greater China's status, the more easily it can promote its own interests). This need for legitimacy directly relates to the CPC leaders' persistent fear of losing power. Domestic discontent with the PRC's authoritarian style of government has at times exploded into national unrest (ex: the 1989 Tiananmen Square Protests), and Chinese leaders are quick to crush any opposition that has the potential to create a similar situation. When totalitarian regimes across the Middle East (many of them allies of the PRC) fell one after another to populist protests for democratization in 2011, the Chinese government, fearing that it could be the next regime to go, silenced all domestic discussion of the so-called "Jasmine Revolution" in a widespread and prolonged censorship campaign. Any notion that the CPC has not raised China's status to where it should be or is any other way illegitimate is targeted as a major threat by the government.

In observing how the CPC works to enhance its status abroad and cement its legitimacy in the eyes of the people, we can find valuable insights through reading a diverse range of politics as performances of sovereignty, not solely ones that are explicitly dealing with the issue. Mark Laffey calls the category of foreign policy in its entirety "a specific kind of boundary producing political performance that draws upon available modes of representation in order to reproduce a particular mode of subjectivity" (Laffey, 431). I argue that domestic policy such as the prosecution of foreigners is also performative.¹⁷ Similar to how gender is performed by individuals within a society to give others a sense of whether a person identifies as male or female, political policy enacted by a state displays to its audience- both other states and individuals- information about that state and how it conceives of itself.¹⁸ This image is

¹⁷ This way of understanding performativity has roots in Judith Butler's work on gender. For more information, see: Butler, Judith. *Gender Trouble*. New York: Routledge, 1990.

¹⁸ In "Legal Performance and the Imagination of Sovereignty" (2006), Paul W. Kahn talks about how crucial legal performance is for maintaining the image of the state as an authority.

maintained through a diverse range of acts, from pounding a gavel to signify that the judge-
representing the state- has made a decision of someone's guilt, to major ceremonies held across
the world meant to convey to viewers the power of the government behind the ceremony.¹⁹ Edyta
Roszko in her work "Maritime territorialisation as performance of sovereignty and nationhood in
the South China Sea" explores one such area of state action that should be read as performance.
Specifically, she examines how China and Vietnam make competing claims of sovereignty over
islands in the South China Sea, demonstrating how the very act of producing a map can be a bold
statement of sovereignty, and thus a performance. By the simple act of drawing a line on an
official piece of paper that encompasses contested territory, an official cartographer is making a
statement visible to the world that their government owns that land (or maritime zone). Anyone
who sees that map then can understand how that government perceives of itself in regards to its
control over that area. I argue that the legal treatment of foreigners in China is similarly an area
of state policy that holds information regarding China's leaders and their view and performance
of sovereignty.

¹⁹ An example of this is the 2008 Beijing Olympics, which conveyed China's new status to a global audience.

Chapter 7

Foreigners as Material for Constructing the CPC's Memory Project

Western foreign individuals in China have long been unique bodies full of symbolic significance. In the years leading up to the Opium War, the limitations put upon them exemplified the Chinese emperor's unique view of the world. Their vulnerability to Chinese punishment was used as a rhetorical justification of war. Throughout the following "century of humiliation," the oppression of extrajurisdiction was most clearly evident in the immunity of the foreigners who could now freely travel into China's interior and bring their unwanted products and ideas with them. Foreigners were special- if they committed a crime against a Chinese, Chinese could not prosecute them. If a Chinese committed a crime against a foreigner, it would further justify the foreign powers' view that China was a place in need of civilizing. They existed as symbolic reminders of China's inferiority to other countries. By the time extrajurisdiction was removed in the 1940s, there were very few European foreigners in the country to play this role. Nonetheless, when the CPC took power over the Mainland in 1949, they treated foreign individuals as representatives of their countries of origin, countries that still posed a threat in the post-extrajurisdiction era. Consider for example the PRC's policy regarding Christianity in the 1950's. During the Republic Period, many foreign missionaries had petitioned their own governments to end extrajurisdiction in China as they found it incompatible with Christian values and disliked the stigma of being associated with imperialism, which they saw as too worldly as well as harmful to their attempts at proselytizing (Bays). Despite this, the CPC labelled all foreign missionaries as imperialists and expelled them from the country in 1951, with the expulsion of nearly all foreigners- missionary or otherwise- being completed by 1953 (Dikötter, 114-115). The removal

of foreign bodies from the Mainland was a policy of considerable significance, as it conveyed China's symbolic freedom from foreign interference.

When the CPC under Deng Xiaoping opened China's borders once again to foreign investment and knowledge in the 1980s, it was recognized by the Party that doing so could contradict its perennially useful anti-imperialism rhetoric. If the absence of foreigners from China meant independence, allowing their presence would have to communicate something other than a compromising of that independence. The solution was to keep much of the old rhetoric the same, especially the "us-versus-them" dichotomy that had driven their militaristic stance against foreigners up to that point. The change was portrayed as taking strategic advantage of the resources of the foreigners in order to make China strong against them. An official slogan adopted at this time- "using foreign strength to propagandize for China"²⁰- reflects this attitude of engagement without allowing China to be put in a subservient role (Brady, 1992). Instead, the opening to foreign ideas and investment was framed as the government reversing the old dynamic of Western countries taking Chinese resources for their own benefit. Thus, foreigners bringing new technologies and products into the country were portrayed symbolically not as intruding imperialists but as tools ultimately under the control of the government.

I argue that in the study of foreigners as symbols in China, a crucial area to observe is how they are treated by the law. By which I mean- how does the law prescribe that foreigners who commit crimes should be treated, and how are they actually treated? The contrast between the two supports Tok's theory that a central aspect of Chinese sovereignty is the existence of graded rings. When foreigners were allowed back into China at the time of Deng Xiaoping's reforms, control over them was determined by the government to be a core issue, as revealed by

²⁰ In the original Chinese: "*liyong waili wei wo xuanchuan* 利用外力为我宣传."

the tight constraints over all foreigner movement. Throughout the 1980s, foreigners would be limited in where they could go, with official hotels being the only place they were permitted to stay. Not only were rules limiting foreigners' freedoms while in China put in place, there were also strict guidelines for police regarding procedures in the event of a foreigner running afoul of the law. The Ministry of Public Security Procedural Requirements for Handling Criminal Cases (《公安机关办理刑事案件程序规定》 *Gong'an jiguan banli xingshi anjian chengxu guiding*) required police dealing with foreign offenders to solicit advice from the foreign affairs office of the administrative region in which the crime took place in handling the case (Ministry of Public Security). As foreigners became more common in China, this amended in 1992 so that police no longer had to consult advice from superiors for each case (Ministry of Public Security). This change marked a shift in the way foreigners were perceived by the government in China, with de facto independence customary of those on the periphery becoming the norm.

As is often the case with crimes in a society without full rule of law, crimes involving foreigner offenders tend to still be treated on a case-by-case basis. Except rather than being a question of whether or not the crime is reported to higher authorities, the question today is whether or not full legal action will be taken if a foreigner is caught breaking a law, or if the incident will even be reported at all. In correspondence with the aforementioned Chinese professor of law, he told me that in the event of a white foreigner's arrest, Chinese police will give them comparatively fairer treatment and that overall, they are treated better. This reflects not just the unique status of foreigners in China, but also the lack of rule of law, as the actual law in China calls for equal treatment regardless of where a person is from. The fact is though that foreigners who break the law are in general more likely to be shown leniency from police than would average Chinese citizens. This perception- that the police are partial and cannot be trusted

to act in accordance with the law- is reflected in popular Chinese perceptions of foreigners in China. When a Polish exchange student was determined to be the one responsible for having kicked a female Chinese pedestrian to the ground in December of 2015, he was given three days administrative detention. This light treatment (considering he was suspected of having been guilty in a number of similar incidents) caused indignation amongst Chinese, many of whom expressed the opinion shared by one netizen who wrote: “Laowai who commit crimes in China should face more severe punishment” (Liu, “Polish Exchange Student”).²¹ Police themselves are aware of the discontent their preferable treatment to foreigners causes, occasionally taking efforts to show the public that they do in fact punish foreign law-breakers, as in the fall of 2015 when police in Shanghai undertook a citywide campaign to punish subway fare evaders. A police representative was quoted in an official news source as saying “We don't discriminate which country a violator comes from” (Liu, “Foreigners busted in citywide crackdown”),²² actively fighting the perception that foreigners are afforded treatment, and yet in doing so, acknowledging that such a sentiment exists. This sense of favorable treatment applies not just to leniency for crimes committed, but also to police assistance when foreigners are the victims of crimes. An image went viral on Chinese social media in October of 2013 that seemingly showed two real advertisements posted in Hefei stating in Chinese: “Foreigner will report crimes for you” (Wertime).²³ The service (priced at 200 RMB per month) would supposedly help “retrieve lost items” as “police take [the complaints of foreigners] seriously” (Wertime). The implication of course being that the police are more helpful when foreigners are the ones reporting a crime, showing that they receive special treatment. While the authenticity of the image is uncertain, the

²¹ Liu's translation

²² Liu's translation

²³ Wertime's translation. In the original Chinese: “*laowai dai bao an* 老外代报案.”

fact that it resonated with so many people shows that there are many Chinese who believe that it reflects reality.

While the law says that foreigners should be treated as Chinese citizens are treated, the decisions of policemen who act as “street-level bureaucrats”²⁴ create a situation where interactions between individuals and police do not always match the laws and guidelines provided to police from lawmakers above. Whether it is because they pity foreigners, admire them, or perhaps most likely, simply want to avoid the hassle of dealing with someone who doesn’t speak their language, police choose to treat foreigners with leniency. The central government is almost certainly aware of this, and yet like issues of Hong Kong’s self-governance it is content to allow the de facto reality to be looser than what is on the books, since this degree of freedom does little to challenge the state’s stability. If foreigners are treated less strictly than the law prescribes, that leniency can always be spun positively to make China look good.

I argue that this mirrors Tok’s concept of graded sovereignty as seen in the Mainland’s relationship with Taiwan and Hong Kong, where issues that do not challenge the state’s authority are treated with considerable leniency, while perceived challenges to Beijing’s de jure sovereignty are met with a stern response. This is seen in police treatment of foreigners- general lawbreaking by foreigners is more tolerated than when Chinese are the ones breaking the law, except in instances where a foreigner’s crime would do damage to the public’s faith in the government if left unpunished. An example of this was seen in the summer of 2012: over a 100-day period starting May 15, police in Beijing began a campaign of rooting out foreigners who lacked proper documents, asking for public help in identifying such individuals (Xinhua). The

²⁴ For more information on this concept, see: Lipsky, Michael. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation, 1980.

news reports announcing the campaign explained it by claiming that illegal foreigners are more likely to commit crimes, and framed the action as potentially a response to an incident where a British man (who was in the country legally) assaulted a Chinese woman. The footage of this incident, combined with the lenient treatment shown to the offender (he was charged with molestation instead of rape) incurred outrage amongst Chinese citizens (Shaw). I argue that the subsequent campaign was a response to this outrage, initiated by top officials who sensed that a lack of action would have a negative effect on the public's perception of the government. In a sense then, this case was one that officials determined could no longer be treated peripherally, due to the threat that it posed to the center's authority.

Akmal Shaikh's case similarly required a strong government response because his crime (along with the British reaction to his conviction) presented a direct challenge to China's sovereign rule and international status. This is not to say without a doubt that he would have received a lighter sentence or been granted a mental health exam were he not British, or had the British government not interfered with his case. China takes drug smuggling very seriously- hundreds of people are likely executed annually for drug crimes, with nearly ten percent of all executions in China in 2014 being for drug crimes (Kaufman). Given this hardline stance against drugs, it is entirely possible that Shaikh could still have received the death penalty had the British government not interfered. But because that interference came before Shaikh's appeals, and because it transformed the whole issue from that of a foreign lawbreaker to one of international debate, it has to be considered as a significant factor leading to Shaikh's sentence. The reason we can suggest political purposes behind Shaikh's execution is the lack of rule of law along with the lack of a clear precedent or consistent pattern. In other cases involving foreigners caught trafficking drugs, capital punishment has not always been employed (Zhang). There is

also precedent for foreigners responsible for serious crimes being shown leniency due to undisputed mental illness (Cohen). Clearly his case had top officials involved as it was taken to the Supreme People's Court, and the strong media defense of his execution can be understood to reflect the central leadership's approval not just of his execution, but also of the denial of Shaikh's lawyers' request for his mental health to be examined. So why was zero leniency shown to him, when capital punishment was not an unavoidable outcome according to law? I propose that it was due to his unique symbolic significance as well as a result of the British government's demands that China adjust their behavior. The unique combination of these factors in Shaikh's case set him apart from other foreigners who have committed similarly serious crimes in China and yet not received the death penalty. It moved him from the periphery to the core, so to speak, confirming that otherwise peripheral issues that present a challenge to Beijing's ultimate sovereignty are dealt with sternly.

In society, European foreigners remain a symbol of elite status- a high number of models in magazines and advertisements are white (Wang, *Brand Management*, 160)- and Chinese will frequently ask to take pictures of and with foreign travelers. In this way, they represent the continued prominence of Western countries in the international system. As mentioned above, foreigners are also afforded better treatment by Chinese police, which has contributed to the notion that they remain a "kind of person that has a special status in China" (Liu, "Foreigners Busted"). How better to show China's growth in status than by asserting complete control over one of these individuals, using him as proof that the government is still strong enough to defend the country from negative foreign influence ? By executing Shaikh, the government could show that its power extends over even foreigners, unlike the weak Nationalist and imperial governments before it. The power to exert complete violence over a person, killing him and

depriving him of life, is a core component of sovereignty claims (Friedman, 15). And while Shaikh's case was one of the more extreme displays of sovereignty by China over foreign individuals in the past decade, he is by no means unique in being used as a symbolic tool by the government to show its strength. More recently, in January of 2016, Peter Dahlin, a 35 year-old Swedish man who had directed an NGO in Beijing offering legal aid to Chinese citizens, was made to confess his "crimes" (purportedly helping clients who were seeking to destabilize the regime) on a video that was then broadcast by China Central Television (Wong). He confessed to having "violated Chinese law," "caused harm to the Chinese government" as well as having "hurt the feelings of the Chinese people" (Wong). Other foreigners, such as Peter Humphrey and Charles Xue, have also had televised confessions broadcast nationally in recent years. The purpose of these videos is ""to demonstrate the party-state's authority over individuals, pure and simple"" (Wong).²⁵ The fact that the individuals confessing are foreigners makes the demonstration all the more significant. The message conveyed is that foreigners can be here if they submit to the government's authority- if they fail to do so, they will be punished.

So how do these demonstrations relate to China's unique graded sovereignty? I support Tok's position that the flexibility provided by graded rings of sovereignty allows the Mainland government to maintain status while also compromising on issues that it cannot afford to take a hard stance on, either for practical reasons or for diplomatic reasons. Consider Taiwan: to demand Taiwan fully submit to de facto Mainland rule would almost certainly result in war that would not only cost huge amounts of money, resources, and life, but would also disrupt the economy of the entire region. Such an action would also eliminate any ambiguity in Sino-American relations and put China firmly opposed to the U.S. and the other leaders of the current

²⁵ Quoting Joshua Rosenzweig, lecturer at the Chinese University of Hong Kong.

system. The PRC has the difficult job of making sure that as it grows in power and gains status, it does so in a way that doesn't worry Western nations too much, lest they collectively work to contain China and stifle its growth (Deng, 15-16). But simply granting Taiwan de jure sovereignty is not a feasible option either, as recognizing the equal legitimacy of the ROC would do major damage to the CPC's legitimacy. By changing the label from a renegade state to an independent Chinese country with a legitimate democratic political system that offers a stark contrast to the limited freedoms provided to Mainland citizens, the government would give its massive population serious reason to question its rule. And so the Mainland continues to maintain a unique relationship with the ROC that can seem to outsiders as unsustainable due to its ambiguous nature. Friedman says that it is in fact this ambiguity regarding Taiwan's status that keeps cross-Strait tensions in check (Friedman, 30). Similarly for Hong Kong, a negation of the city's right to govern itself would not only risk damaging the lucrative economy, but would also enrage the local populace and other countries such as Britain, neither of which are outcomes favorable to the CPC. Upset people start protests which threaten the stability of the regime, and too much condemnation from Western countries would turn them against China's rise, leading not only to trade problems but also to a less favorable opinion of China and therefore a lowered international status. Graded rings of sovereignty allow China to avoid the undesirable outcomes of demanding full obedience from the periphery while maintaining the status that comes from claiming the actual sovereignty over a place. The government acts (or reacts) strongly when it feels its de jure sovereignty is being challenged, or, when the people feel that the government is being weak. Such challenges or lack of faith create the possibility of the stability of the regime being threatened, and thus the costs of stern action are in such cases outweighed by the potential cost of inaction. These aspects of China's sovereignty are confirmed upon observation of Akmal

Shaikh's case, especially when placed in the broader picture of how European foreigners are treated by the police in China.

Shaikh, along with Dahlin and other foreigners whose wrongdoings are displayed by the government for the world to see, must be understood not only as individuals caught in the legal trappings of an authoritarian regime, but also as the objects of a "memory project" being carried out by the government. Memory projects are efforts to "create and maintain a kind of collective memory that a group of individuals may share, but may not be shared by other groups" (Liao, 144). As such, they are extremely productive for nation-building, as to be part of a nation is to share a "collective memory of the past that binds a group of people together" (Wang, *Never Forget National Humiliation*, 7). Some of the tools of memory projects are quite familiar: textbooks expounding a particular version of history, national memorials commemorating the heroic members of a country, national anthems sung by young and old, etc. Whether read, viewed, or experienced, these tools imbue in the participant a sense, shared with others of their nationality, that history and reality should be understood in a certain way, a way which happens to be manipulated by those behind the memory project. The Chinese government has taken great efforts towards instilling a shared historical memory in its citizens, with education being the most visible tool. In his book *Governing Educational Desire*, Andrew Kipnis writes: "the central Chinese government has self-consciously viewed the curriculum more and more as a tool to build a unified, patriotic, and Party-loving national culture" (Kipnis, 93). Across the nation, children are provided with standardized education regarding China's past- *their* past, remembered as the CPC wants them to remember it- which homogenizes the public's historical memory. This is accomplished not just through history classes, but also through "patriotic themes" that are "force-fed to children in literature, history, social science, and thought and

morality classes” (Kipnis, 94). Hating imperialism and being able to identify and denounce it not just in historical events but also in confrontational acts by foreign countries (such as the British government’s demands that Shaikh not be executed) becomes a virtue taught to children at a young age. Consider the PRC’s national anthem, “March of the Volunteers,” which is sung by schoolchildren across the nation on a daily basis. The first line is a call to all Chinese, people “who refuse to be slaves” (Wang, *Never Forget National Humiliation*, 89). The song ends by rallying the nation to “Brave the enemy’s gunfire” and “March on! March on!” The implication of these lyrics is clear: there is an enemy that wants to make the Chinese people slaves. The antagonism of this vague Other necessitates action- to “march on” together as one nation, united by their experiences of being oppressed and of fighting that oppression. This education is useful in the government’s memory project because it affects the people of an entire nation from as early as they can read and write. It is giving future generations of Chinese a government-designed way to see not only their country’s history but also a way to see themselves: as members of a nation that has overcome hardship and must continue to “march on” in order to defeat the enemy and prevent a repeat of the century of humiliation.

Another way that the government creates this shared historical memory is through the strategic framing of past events. A perfect example of this is the Old Summer Palace in Beijing, which was destroyed by joint British and French troops in the Second Opium War of 1860 as retaliation for the torture and execution of their messengers by the Chinese. Rather than restore the site to its former glory as some Chinese have proposed, the government has chosen to leave the ruins as they are lest they “distort the history of the destructive Western allied forces” (China Daily). Ye Yanfang, a researcher at the Chinese Academy of Social Sciences, called the ruins “the most concrete evidence of Western atrocities” and as such, they “should be reserved as the

scene of a crime” (China Daily). To ensure that this dramatic example of Western aggression from a century and a half ago is not forgotten by future generations of Chinese, school trips and “government-sponsored “patriotic education” programme[s]” bring countless visitors to the site each year (Bowlby).

Like the ruins of the Old Summer Palace, Shaikh, as well as Dahlin, Xue, and Humphrey, were displayed by the government as symbolic objects to confirm their narrative that foreigners are still a threat to the Chinese people, and as such became tools of the CPC’s memory project. Furthermore, the punishment enacted upon them shows that the CPC is capable of dealing with this threat. By holding these guilty foreigners up for criticism and punishment, a sense of righteousness is produced by contrast in the eyes of the viewers- *they* are the ones being collectively wronged, and the government is protecting them (Liao, 154). As this dichotomy- them versus us, including our government- is repeatedly displayed for the Chinese public, it becomes more natural to interpret future actions by foreigners or foreign governments deemed wrong by the CPC as indeed wrong. And for a regime concerned about maintaining legitimacy in the eyes of its people, any fuel for strengthening that government-people bond is extremely valuable. In the case of Shaikh, the Chinese government further supported their claim to rightness by portraying British citizens as being equally disgusted with their own government’s actions. Global Times, a daily tabloid under the auspices of the government’s People’s Daily, put out an article the day after Shaikh’s execution that proudly declared: “British netizens support China’s ruling”²⁶ (Huanqiu). The article featured translated comments from British news message boards that said in effect “this is China’s responsibility,” portraying the British government as out-of-touch with its own people, who could see the hypocrisy of its actions just

²⁶ In the original Chinese: “*Ying wangyou zhichi Zhongguo panjue* 英网友支持中国判决.”

as the Chinese public could. The debate surrounding Shaikh fit perfectly within the government's greater memory project of casting foreigners as historically and continuously opposed to the Chinese nation, a nation that becomes more solidified the more a dangerous "other" is clearly defined. And through his execution, the government was able to convey to its domestic and international audiences that it is indeed sovereign over all people within its borders. As Tim Liao writes, "collective memory projects work especially well in "educating" their own citizens about their legitimate sovereignty claims based on the set of collective memories built upon a range of verifiable historical events" (Liao, 158).

Shaikh's symbolic potential as a memory project that made him a useful figure for the government was only heightened by the British government's demands for leniency. The most offensive aspect of the whole situation was not simply that a British citizen had tried to smuggle drugs into the country- had the British government accepted Shaikh's fate and respected the Chinese courts' decision to execute him, his case would certainly not have become the major issue that it did. What enraged the Chinese public and government alike was that top British officials were using rhetoric and political pressure to try and compel their Chinese counterparts to grant Shaikh leniency. Throughout the months leading up to Shaikh's eventual execution in December of 2009, top officials within the British government repeatedly expressed their strong condemnation of the court ruling, specifically the decision to not review Shaikh's mental health. Foreign Office minister Ivan Lewis personally asked the Chinese ambassador in London, Fu Ying, to try and change the outcome (Topping, Watt, and Watts), and the British prime minister Gordon Brown even appealed personally to then-Premier Wen Jiabao on the issue (Prince). Following Shaikh's execution, Brown spoke out publically against the ruling, saying that he was "appalled and disappointed" at the outcome and that he condemned it "in the strongest terms"

(Prince). Overall, the British government made 27 appeals for clemency to the Chinese embassy, and yet this strong show of diplomatic pressure was unable to influence the Chinese decision. If anything, these actions only served to further seal Shaikh's fate. It was the demanding response of the British government that the Chinese public and government found most offensive and that most strongly triggered negative memories of the "century of humiliation." Once Britain started protesting Shaikh's death sentence, it was easy for the Chinese government to frame the issue as one of national sovereignty, where China's rights to govern itself were being impinged upon. This sentiment was echoed across the country's online message boards: netizen responses include: "China is not the China of a hundred years ago"²⁷ and "Almost 200 years later the British government once again is playing the same role!"²⁸ (Chinasmack.com).

These demands would have been viewed by the Chinese public through the lens of historical memory of extrajurisdiction. The government would have been aware of this, and aware of the opportunity that Shaikh's case presented them to show the entire country and the world how far China has come. The message afforded by Shaikh's execution was powerful: no longer can China's laws be dismissed by other nations who find them disagreeable. No longer can foreigners demand preferential treatment and expect to receive it. As a case that was being managed and defended by top officials, this case can be read as a performative act that reveals how Chinese leaders perceive of and strategically engineer their own sovereignty. Significantly, that sovereignty extends over foreign nationals who commit crimes within China's borders, something that was long denied China. While extrajurisdiction has not existed in China for 70 years, the

²⁷ In the original Chinese: "*Zhongguo yi bu shi bai nian qian de Zhongguo le* 中国已不是百年前的中国了."

²⁸ In the original Chinese: "*jiang jin 200 nian hou Yingguo go-vern-ment you yi ci banyan le tongyang de jiao* 将近200年后英国 go-vern-ment 又一次扮演了同样的角!"

right to try and execute foreigners (specifically Britons) by Chinese law had never been exercised before Shaikh.

This case also shows the balance that China's leaders have to manage between maintaining productive relations with other countries and cementing their legitimacy in the eyes of the public. By acquiescing to British requests for Shaikh's mental health to be considered, China's leaders could have done their relationship with one of the most influential countries in the world a favor and demonstrated their sensitivity to human rights, elevating its international status to a degree. But such potential benefits were outweighed by the potential cost- giving in to British demands to manage the case a certain way would have looked too much like the weak submission to Western powers that the CPC has spent nearly a century condemning. By putting China's face in the eyes of its people on the line, British diplomats effectively eliminated any chance that Shaikh had for a lighter sentence. In this instance, China's leaders prioritized their domestic spectators over the angry British officials who failed to appreciate the historical gravity of the situation. For much of the 19th century and the first half of the 20th century, the men in power in China made the opposite choice in trying to appease the stronger nations who denied them the right to possess full authority in their own country. The CPC realized very early on that one of its greatest strengths is the ability to deny such a past- it has successfully labeled itself the party of liberation from foreign imperialism, and Akmal Shaikh provided them with a golden opportunity to prove that it deserves that label. His execution was interpreted in China not as the tragic violation of a mentally ill person's human rights, but rather as a strong and admirable response to the arrogant attempts of the British to treat China like it used to during the "century of humiliation." For any in China who sympathized with Shaikh or disagreed with ruling, his execution serves to convey another message: that the Party is indeed an enemy to be feared, and

one that takes any potential threats to its rule and honor very seriously. It might also be considered noteworthy that Shaikh, a Muslim, was executed in the capital of the Xinjiang Uyghur Autonomous Region not half a year after the same city was racked by Uighur riots that resulted in hundreds dead or injured. At the time of his death in December of 2009, Urumqi was still filled with police tasked with keeping the peace (Sainsbury). While Shaikh himself was not associated with any kind of separatist movement, nor did the government deny him a proper Muslim burial, his execution nonetheless must have been a somber reminder of the complete control that the government maintains over the lives of individuals. This dual message- we will protect our country from external harm, and we have the power to do so- resonates with the image of the government Tahirih Lee found being conveyed by media articles going all the way back to the 1950s: caring and protective, yet strict and harsh when disobeyed” (Lee, 480).

Chapter 8

Conclusion

As China continues to grow in power and status, its history nonetheless remains an important element influencing both how international issues are perceived and how the government portrays itself. This history is a memory project designed by CPC leadership to reaffirm their capability in defending the nation from foreign threats to China's sovereignty. In this work I have presented a look at how the historical memory of extrality shapes contemporary Chinese interpretations of sovereignty and their place in the international system, as seen in the case of Akmal Shaikh. When the British government argued that Shaikh should not be executed, the issue of his crime and how it would be punished became a question of the Chinese government's ability to resist the imposition of foreign will. As such, executing Shaikh was as much a performative display of the CPC's strength in the face of international pressure as it was a punishment of his crime. This performance of sovereignty was framed by the Chinese media to contrast with the weakness of the Qing and Republican regimes in resisting foreign violations of Chinese sovereignty. By doing so, China's leaders bolster their own legitimacy claims by proving themselves capable of protecting the country from a historical enemy that they portray as being as much of a threat to China's sovereignty today as in the days of extrality.

This desire to cement their legitimacy as the leaders of China motivates the CPC to respond sternly to any challenges to its authority. Tok shows how the central government prioritizes maintaining *de jure* sovereignty over *de facto* control in Hong Kong and Taiwan, and I argue that this attitude is reflected not just in territorial claims but also in the government's treatment of foreign criminals. While the movements and illegal activities of foreigners were closely monitored during the first decade following Deng's reforms, the current situation sees

Chinese police treating foreigners who break the law more leniently than they do Chinese, showing that domestic lawbreaking is a more central concern to the government. Like the greater autonomy allowed to Chinese in Hong Kong and Taiwan, this lenient treatment of foreigners can be interpreted as evidence that the central government sees them existing on the periphery, where de facto control can be relaxed as long as de jure sovereignty is not challenge. When a foreigner's crime (or their home country's response to their conviction) presents a challenge to Beijing's de jure authority, the issue moves from the periphery to the center, and must then be dealt with in a firm manner.

I argue that this is exactly what happened in the case of Akmal Shaikh. The British government's confrontational response to his sentence was interpreted as an attempt to violate China's sovereignty, and thus presented a challenge to China's de jure authority over foreigners within its borders. This development prevented the possibility of Shaikh receiving a lighter sentence in a court of appeals, as central leadership could no longer afford to show him leniency. This work should not be read as a prediction of future action on the part of the Chinese government, nor can the conclusion be drawn that the central government's concern for its own status and legitimacy is the sole factor to consider in interpreting state action. It is, however, an important factor, and by examining how this concern is enmeshed with issues of historical memory and sovereignty, we can build a better understanding of contemporary China.

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