

A Victorian Embarrassment: Consular Jurisdiction and the Evils of Extraterritoriality

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Abstract

In 1856, the Treaty of Paris nominally welcomed the Ottoman Empire into the Concert of Europe, but this exposed a deep fault line in international relations. Although the gesture implied full sovereign rights, it seemed incompatible with the extraterritorial privileges held by Europeans in Ottoman lands under the age-old capitulations. New commercial treaties complicated the issue by extending similar privileges to British subjects as far afield as China, Siam and Japan. Consular jurisdiction soon became the focus of controversy in Westminster as extraterritoriality featured prominently in local disputes following British commercial expansion across Asia, among them the *Arrow* incident that led to the Second Opium War. In Japan and other states, it would also become a key grievance in popular campaigns against 'unequal treaties' and the injustices of informal empire. This analysis shows how, even before such narratives of resistance emerged, there was already a seam of ambivalence in Victorian political discourse on the question of extraterritoriality. In the Foreign Office it came as no surprise to be told of defects in these treaties, but it was the context of the existing debate, notably fresh initiatives to set up mixed courts, that framed the British response.

As the Crimean War drew to a close, the strategic imperative for Britain, France and Austria was to ensure a solid bulwark against Russian ambitions in the Mediterranean. In March 1856, this desire for a strong ally led to Article VII in the Treaty of Paris, as the Ottoman Empire was 'admitted to participate in the advantages of the Public Law and System (*Concert*) of Europe.'¹ It was an unprecedented step to accept a non-Christian state into this select club, but one that exposed a deep fault line in nineteenth-century international relations. Since membership implied full sovereign powers, it appeared to be inconsistent with the extraterritorial rights still held by Europeans within (and compromising the sovereignty of) the Ottoman Empire. Conscious of this ambiguity, a sweeping caveat promised a multilateral conference on extraterritoriality, to be held in Constantinople.² The conference never took place, and further treaties in the 1870s after fresh military conflict with Russia would only entrench the existing arrangements, perpetuating the 'hanging sovereignty' or 'sovereignty in abeyance' that characterized the last decades of Ottoman rule.³

In a global order centred on a parochial 'inner circle' of 'civilized states', admission to the Concert of Europe was thus a pyrrhic victory.⁴ As membership spread across the Atlantic, moreover, the system outgrew its regional origins and a more inclusive framework, the Comity of Nations, came into usage.⁵ European by design, the Westphalian model of sovereignty was considered universal in scope.⁶ Already full recognition had been accorded to the new Latin American republics.⁷ However unstable or corrupt such regimes might be, the consensus was that they shared with Europe a common understanding of international law. Even the island kingdom of

Hawai'i was accorded full sovereign rights in 1846 on concluding treaties with Britain and France. Having converted to Christianity in 1820, this became the first non-European indigenous state admitted to the Family of Nations.⁸

No such understanding was shared with non-Christian states to the east. In the Ottoman Empire, customs, religion and laws were considered so fundamentally different that special concessions known as capitulations had long since exempted Venetian, Genoese and other merchants from local justice. These granted foreign residents the privilege of extraterritoriality by placing them under the protection of their own consuls.⁹ Initially conferred as gifts of all-powerful sultans (notably Suleiman the Great to the king of France in 1536), such privileges were now viewed more as inherent rights.¹⁰

Montesquieu, among others, had fostered a belief that Europeans were entitled to immunity from the barbarous laws that oriental despots used to enslave their own subjects. Fears of alleged tyranny and torture justified similar privileges as Western powers then made terms with China (1842), Siam (1855), and Japan (1858).¹¹

Extraterritoriality thus became a key element in the treaty port system extended across East Asia in the nineteenth century. The 1843 Foreign Jurisdiction Act provided a legal framework, confirming the authority of British courts overseas 'by treaty, capitulation, grant, usage, sufferance, and other lawful means'.¹² Soon after the Treaty of Paris, however, concerns were raised in some quarters about the wisdom or even justice of consular jurisdiction. In October 1856, it was at the heart of the *Arrow* incident, the dispute in Guangzhou that prompted the outbreak of the Second Opium War. Apprehension would only grow as, two years later, the resulting Treaty of

Tianjin established yet more foreign settlements in China, and similar terms in the Treaty of Yedo brought British consuls to Japan.¹³ This analysis charts the emergence of awareness on a contested issue in Victorian political discourse. It identifies a seam of ambivalence on the question of extraterritoriality already manifest in Britain, even before it became a target of popular protest abroad. In the short term, as the unfolding debate reveals, these dissenting voices elicited only a limited government response, confined to enforcing regulations over British subjects, and experimenting with mixed courts. Ultimately, however, they would reach a wider audience, not only in the field of international law, but offering insight to states such as Japan in formulating their own arguments against consular regimes.

I. Early Symptoms of a Victorian Complaint

In international relations, extraterritoriality now features in debates on transnational flows and how globalization might be undermining the Westphalian state.¹⁵ The growing currency of the term has also prompted renewed interest in the study of its past.¹⁶ In legal circles, however, it never really went away. The 1943 US-China Treaty may have abolished extraterritorial rights, for example, but a supplementary agreement soon created the framework for 'a blanket of exemption from local law' that was subsequently implemented for US servicemen in military bases across the globe.¹⁷ In the notable case of Okinawa, the US-Japan Status of Forces Agreement remains a source of political tension today. Elsewhere, the term has featured in questions ranging from the growth of cyberspace and policing multinational corporations to protecting refugees, rendition and terms of detention in Guantanamo Bay.¹⁸

In modern histories of the Middle East and East Asia, the theme of resistance to extraterritoriality features prominently in narratives of struggle against Western domination. Already by the mid-nineteenth century, one Ottoman statesman had identified some pernicious effects. At the Paris Peace Conference in 1856, Grand Vizier Ali Pasha complained that extraterritoriality ‘constitutes a multiplicity of Governments within the Government, and consequently, an insuperable obstacle to all improvements’.¹⁹ Such awareness was yet to crystallize in East Asia, but in the 1870s it became a key grievance in the campaign for treaty revision launched in Meiji Japan. It was also a central element in the appeal against ‘Unequal Treaties’ made by the Chinese Republic to the League of Nations in 1925. By this stage, extraterritoriality had been phased out in Japan, as the 1894 Aoki-Kimberley Treaty came into force in 1899, and then in Turkey with the 1923 Treaty of Lausanne. Persia followed suit in 1928, and Thailand in 1938, but it was not removed from China until 1943. To some extent the practice continued in the Mixed Courts of Egypt until 1949, and in the International Zone at Tangier until 1956.²⁰ Even then, the extraterritorial jurisdiction exercised by the British Crown over non-Muslim foreigners remained throughout the Persian Gulf (except in Iran and Saudi Arabia); in Kuwait it only disappeared in 1961, in Muscat in 1967, and elsewhere in the region by 1971.²¹

Resistance to these extraterritorial regimes did not appear overnight. Practical issues in the daily running of consular jurisdiction were always apparent, but without some grounding in international law the theoretical implications were less clear. Only in the early decades of the nineteenth century, moreover, did the ‘positive’ turn in this field introduce a notion of sovereignty incompatible with capitulations and other traditional forms of

legal pluralism. As late as the 1790s, for example, Edmund Burke defended the overlapping systems of jurisdiction in India during the impeachment of Warren Hastings.²² A less accommodating view would emerge, however, for as American jurist Henry Wheaton declared in 1836, ‘the exclusive power of civil and criminal legislation is...an essential right of every independent state.’²³ In this framework, extraterritoriality could only exist by ‘express compact’, as an exception to the general rule.²⁴

Long before the issue became a focus of popular indignation, therefore, educated elites from Constantinople to Edo struggled to digest these alien concepts in their own cultural terms.²⁵ Initially, their exposure to the Law of Nations came through diplomatic correspondence, but subsequently they also had access to legal texts in translation. In the Ottoman Empire the gestation of these Western ideas began in the *Tanzîmât* (Reorganization) period of legal reforms introduced in 1839, a year after new commercial treaties were signed with Britain and France. In East Asia it accompanied American missionary William A. P. Martin’s translation of Wheaton’s *Elements of International Law* into Chinese in 1864, and the return from Europe of the first Japanese travellers to study the Law of Nations abroad.²⁶

Facing no such language or cultural barriers, some British observers were already expressing reservations over consular jurisdiction. Commenting on the Treaty of Adrianople in 1829, for example, the foreign secretary, Lord Aberdeen, pointed out, ‘the commercial privileges and personal immunities which are secured by the treaty to the subjects of Russia appear to be at variance with any notion we are able to form of the authority of a sovereign and independent prince.’ His prime concern was Russian encroachment, but he betrayed the cultural superiority of his age when explaining how this

anomalous situation was 'in consequence of the defective administration of justice by the Turkish Government'.²⁷ Twenty-five years later in 1854, just as Aberdeen's own coalition government was launching the Crimean campaign, the despatch containing these remarks was laid before Parliament and circulated by the press.²⁸ According to the *Times* correspondent in Constantinople, the system of capitulations was now 'a great subject for reform', as foreign powers exercised jurisdiction 'in a manner inconsistent with national independence and sovereign rights'.²⁹ While 'it is true that the Turkish courts are execrable', he admitted, it was still deplorable that, 'in every district of the empire, in every class of society, the influence for evil of capitulations and legalized foreign interference is to be observed.'³⁰

By this stage, British diplomats were increasingly suspicious of Russian and French motives for granting protection to Orthodox and Catholic subjects in Ottoman lands. At the same time they were creating such protégés of their own, many of them from the Ionian Islands or Malta, both British protectorates since 1815, 'to say nothing of genuine Greeks and Armenians who managed to get English passports under one pretence or another'.³¹ As Eustace Grenville-Murray, a maverick diplomat writing under the name of 'The Roving Englishman' complained in 1855, 'it is a notorious fact that passports according the privileges of British subjects are much too lightly given to foreigners – especially in the Levant.'³² The Law Officers of the Crown also voiced concern that in 'the Turkish dominions, China, Morocco, Siam, and Japan', the recent Orders in Council issued under the Foreign Jurisdiction Act had 'invested H. M.'s Consuls and Vice Consuls in these countries with very extensive and peculiar powers; exceeding in many instances the jurisdiction of power possessed by any British court or magistrate, or by the

Governor of any British colony'.³³ Across the Middle East, moreover, language problems had even induced the Foreign Office to appoint local merchants to British consular posts. In the words of Edmund Hornby, then a young official in Constantinople, 'the whole Levant service had got out of hand.'³⁴

Gathering in 1856, European diplomats at the Congress of Paris agreed that there were issues with extraterritoriality. As Ali Pasha pointed out, it even contributed to the trading obstacles that they themselves now wished to regulate.³⁵ Intent on containing Russia, they recommended modifications, but these would be subject to Ottoman legal reforms, and in practice fell short of removing extraterritorial rights. The British also responded by commissioning Hornby to submit a report on the judicial powers exercised by consuls with no legal background. In 1857 this led, by Order in Council, to the creation of the British Supreme Court in Constantinople, a new second-instance tribunal with trained judges.³⁶ Further negotiations would also produce a new land code by 1867, at last granting foreigners the right to own property in the Ottoman Empire. The problems raised in Paris had not disappeared, but it seemed they were being addressed. In British political circles, meanwhile, attention on the subject shifted to East Asia, where consular jurisdiction appeared to be instrumental in fomenting 'Queen Victoria's Little Wars'.³⁷ Rather than just part of the Eastern Question, or confined to either China or Japan, it permeated a broader debate on British foreign policy as a whole.

II. Extraterritoriality in Victorian political thought

Early in 1856, just as the talks in Paris were settling the Crimean War, news emerged that Lord Dalhousie, the governor general of India, had proclaimed the annexation of Oudh. Back in London, the growing workload

facing the Foreign Office was soon compounded by the Sepoy Rebellion (1857-58), the opening of treaty ports in Japan (1859), and the extension of trade down the Yangzi Basin after the Second Opium War (1856-60). At this high watermark of free trade imperialism, there was general confidence in the benevolent, even civilizing, influence of Victorian commerce across the globe. Some dissenting voices, however, were less sure of where this burden of responsibility might lead. Humanitarian concern was expressed for the welfare of colonial subjects, and calls for non-intervention reflected a growing sense of anxiety on the overextension of empire.³⁸

Richard Cobden and other advocates of free trade were among the fiercest critics of far-flung military campaigns. While not entirely against imperial expansion, the Cobdenite, or Manchester School, saw commerce, not war, as the path to lasting prosperity. Recent incidents involving consuls in East Asia also concentrated minds on the question of extraterritoriality. Consulting texts on international law, politicians used a familiar but effective rhetorical device, drawing hypothetical comparisons to highlight European double standards towards non-Christian states. Such a line of enquiry could lead to reflections on the nature of 'civilization' itself.

In February 1857, for example, Cobden's attack on the outbreak of the Second Opium War in the House of Commons helped bring down Lord Palmerston's government (albeit temporarily).³⁹ He condemned the handling of the *Arrow* incident as 'illegal on our part'. In his view, Harry Parkes, the British consul in Guangzhou, had no right to complain, let alone resort to force, after local police boarded a Chinese vessel and arrested her Chinese crew on suspicion of piracy. He also cast doubt on his claim of injured national pride, as allegations that they had hauled down a British ensign in

the process were never confirmed. It was patently a flag of convenience anyway, obtained when the ship's Chinese owner registered the *Arrow* in Hong Kong, and the licence, moreover, had since expired.⁴¹ Had this occurred in Charleston, stressed Cobden, the British ambassador in Washington would make his officials on the spot apologize to the governor of South Carolina, rather than demand redress as had happened to Commissioner Yeh in Guangzhou. He was also unimpressed by calls from Liverpool merchants to limit duties on imports and exports in China to 5 per cent, remarking, 'that is certainly a tariff which I should like to see applied to Liverpool.' And as for their demands to open all Chinese coastal river ports to British vessels, he wondered how they might react if the Tsar announced similar designs on Turkey. 'Can you imagine anything more stunning than the explosion which would take place at Liverpool', he asked, 'if such a ukase as that were to come to us from Russia?'

When the Treaty of Tianjin brought a halt to the military campaign in 1858, this too came under fire in the House of Lords. British privileges were now extended across China, but with all his experience as a former colonial secretary and early advocate of free trade, Henry Grey expressed doubts about the prospects for peaceful relations. Even in the existing treaty ports, he observed, consuls were hard pressed 'to watch over and carefully scrutinize the conduct of all persons being British subjects trading under their superintendence'. Merchants who chose to make profits in China should do so at their own risk, he argued, for 'if they were only to be judged by English laws, when there were no English police, no English courts, and no means of maintaining order and peace, it was utterly impossible that abuses should not prevail.'⁴³

Although in a minority, Grey was not alone in voicing concerns over British expansion in Asia. John Stuart Mill, himself a former employee of the East India Company, held reservations about the incoming Raj.⁴⁴ Similarly, the prolific writer, Francis William Newman, blamed the unrest behind the Sepoy Rebellion on Dalhousie's controversial 'doctrine of lapse', which had been used to seize territory in 'any *just* opportunity'. Writing in the *Westminster Review*, he insisted that Britain in 1858 still had a duty to uphold its 'international' relations with recently annexed Indian states, and condemned Dalhousie's methods as symptomatic of British foreign policy as a whole. 'The word *just*, thus used by English statesmen towards Asiatics', Newman explained, 'means *in accordance with treaty*, quite regardless of the questions whether that treaty was obtained by unjustifiable violence, (as were *all* our treaties with Oude,) and whether the party who made the treaty had any legal or moral right to make it.'⁴⁵

The new treaties of Tianjin and Yedo, for example, both declared that 'justice shall be equitably and impartially administered on both sides'.⁴⁶ In the case of China this was clearly imposed by war, but the treaty with Japan seemed peaceable enough. Yet in *The Capital of the Tycoon*, a two-volume memoir published in 1863, Sir Rutherford Alcock, the British minister in Japan, proclaimed that Townsend Harris, his American counterpart, had secured the momentous treaty by threatening British force.⁴⁷ During an interview in Edo Castle in 1857, Harris had certainly exaggerated the import of letters he received from Sir John Bowring, the governor of Hong Kong, when he warned that 'the English government...is ready to make war with Japan.'⁴⁸ Either way, Grey went on to tell the House of Lords that all these treaties 'were obtained by coercion'.⁴⁹

Grey soon became the most vocal critic of 'the clause which is known by the barbarous name (I do not know who invented it) of the extra-territoriality clause'.⁵⁰ In portraying a state of near anarchy in the treaty ports, his outlook revealed a streak of establishment prejudice against mercantile communities abroad. This view from Westminster also reflected the bias shown by British diplomats towards foreign merchants in Japan.⁵¹ Paraphrasing Alcock, Grey declared, 'in scarcely any other country in the world can there be found so large a number of reckless and lawless individuals.'⁵² Similarly, during a visit in 1860, the bishop of Victoria, George Smith, found Yokohama infested with 'disorderly elements of Californian adventurers, Portuguese desperadoes, runaway sailors, piratical outlaws and the moral refuse of European nations.'⁵³ Unfortunately, the consuls in charge of this unruly host did not boast much legal training, and in both China and Japan at this stage any capital cases or appeals were referred to the Supreme Court of Hong Kong. As Grey put it, 'if France had a right to say that French subjects should not be punished for offences committed in England save by the French authorities, when France had no tribunal here, you would not, I maintain, preserve London from plunder for twenty-four hours.'⁵⁴

Even without disgruntled samurai lurking nearby, confusion over extraterritorial privileges caused tensions within the Yokohama foreign community. Merchants did not take kindly to being called 'the scum of Europe', and no British diplomat was allowed inside the Yokohama Club until Alcock had left Japan.⁵⁵ A turning point was the case of Michael Moss, a young trader who, in November 1860, contrived to shoot and seriously wound a Japanese guard while resisting arrest for breaking local laws against hunting game and using firearms within twenty-five miles of Edo Castle. As

La Patrie observed at the time, ‘foreigners attempting to shoot in Windsor forest, or the French forests, would at once find themselves within the grasp of the law.’⁵⁶ Held in a local gaol for several hours before the British consul secured his release, Moss was ordered to pay a fine by the consular court and then deported. The Yokohama community organized a collection to raise this sum, however, and an attempt by Alcock to impose a further custodial sentence of three months in prison was overturned by the Hong Kong Supreme Court. Stung by the intimidation he faced from British merchants defending Moss, Alcock called for practical reforms. Trained judges should be appointed, he suggested, perhaps at Hong Kong, to be despatched on demand to any treaty port so that ‘the British communities would be liberated from the bondage to “boy consuls” and “lay justice”.’⁵⁷ Referring to the Supreme Court at Constantinople, he added, ‘this, or a somewhat similar system, has been adopted with success in the Levant.’⁵⁸

By 1863, the increasingly volatile situation in Japan was threatening to embroil the armed forces in combat there as well. Grey’s comments to the Lords followed the news that a Royal Navy squadron was on its way to seek redress from the Satsuma domain for the murder of a British merchant the previous year. Charles Lennox Richardson had been out riding near Yokohama on 2 September 1862, when he was cut down by the vanguard of a *daimyō* procession. Whether or not the victim’s conduct provoked the fatal attack, in Grey’s eyes the incident was symptomatic of a foreign community out of control.⁵⁹ It certainly reinforced the impression created by Smith in his recent account: ‘I have seen Englishmen and others of my acquaintance in different parts of Japan riding at a rapid pace through the villages and

suburbs of cities amid crowds of people, who had to scamper in hurried movement from side to side to avoid being knocked down.’⁶⁰

When reports on the bombardment of Kagoshima then emerged, the debate in Westminster shifted to the naval operation. Cobden declared, ‘it is precisely as though an enemy should lay Bristol in ashes because an individual had been murdered on the highway between London and Brentford.’⁶¹ Citing legists such as Vattel and de Martens, Charles Buxton reminded the House of Commons that ‘the destruction of towns was a measure odious and detestable,’ pointing out rules of conduct that ‘besiegers are to direct their artillery against the fortifications only.’⁶² To some extent his audience was already aware of the logistical difficulties involved, following the bombardment of Tringanu, a comparable incident in southern Siam in November 1862. On that occasion, they were told, ‘Captain Corbett did his best to fire only upon the palace and the fort, but, owing to the rolling of the ship, some of the shells fell into the populous town and set it on fire.’⁶³

In Japan, meanwhile, reprisals loomed again in 1864, this time after batteries of the Chōshū domain guarding the Strait of Shimonoseki opened fire on foreign shipping, closing trade through the Inland Sea. Alcock himself came under the spotlight in Westminster for his belligerence in orchestrating the allied squadron that went on to silence the Chōshū guns that year. An anonymous pamphlet on *Diplomacy in Japan* was laid before Parliament, suggesting that it was the consuls rather than merchants who deserved reproach, notably Alcock for setting a bad example.⁶⁴ The treaty itself was most to blame, however, since extraterritoriality was ‘a suicidal concession by the nation which permits it’.⁶⁵ It only caused trouble for those who claimed the privilege, and ‘in reply to the abuse generally heaped upon the mercantile

community, as the authors of all the troubles in Japan, they may, in self-defence, point to the instance of Canton [Guangzhou], among others, where trade had been carried on for upwards of one hundred years in quietness and with prosperity, so long as Extraterritoriality clauses were not in existence.⁶⁶ This gave a rosy portrayal of the Canton System, which had frequently been the source of Sino-British tensions from its inception in the mid-eighteenth century until the First Opium War.⁶⁷ It implied, moreover, that the destabilizing effect of extraterritoriality served an insidious agenda, by claiming that ‘within twenty years of the commencement of the present system, three wars have been undertaken to gain a position of ascendancy for “Western civilisation”’.⁶⁸

This was Grey’s cue to tell the Lords: ‘it is desirable that the treaty should be revised and its terms amended.’ Outlining twelve resolutions for Japan, he proposed, ‘it is in the first place indispensable greatly to restrict the operation of what is called the “extraterritoriality” clause.’ He was shocked, for example, that the British consul in Yokohama should have to issue a notice condemning ‘the reckless manner in which Englishmen were in the habit of riding at full speed through the crowded ways’. At present the authorities also seemed powerless ‘to enforce the good conduct of our own subjects’, for as Grey observed, ‘if English sailors at Havre or New York, or American and French sailors in Liverpool, were exempt from the interference of the local police, and if they could only be dealt with by their own Consuls, it would be impossible for a single day to maintain order and peace in these towns.’ If extraterritoriality must be retained at all, he suggested, ‘it ought to be confined within the narrowest limits possible.’⁷⁰

Grey's motion was defeated, but soon afterwards the full text of his resolutions appeared in the *Yokohama Commercial News* and was promptly translated into Japanese.⁷¹ In London as well they reappeared in a collection of essays published in 1865 under the title of *The East and the West: Our Dealings with Our Neighbours*. Grey's thoughts had clearly struck a chord with its editor, Henry E. J. Stanley, reminding him of his own experience as a diplomat in Ottoman lands. Charting the evolution of foreign privileges from their origins in the capitulations, his leading piece on 'Our Consular System' stressed that the current arrangements had become open to abuse. In Constantinople, for example, a British steamer ignored local protests when landing near the palace and 'blew all its smoke through the windows'. In Bangkok as well, local customs are flouted as 'Europeans delight in standing on the small wooden bridges over the canals when any of the Ministers or great nobles are passing in front of it by water.'⁷²

Appalled at 'the damage done by the extra-territorial system', Stanley argued that 'Lord Grey's Resolutions were called impracticable, [only] because they were too practical, and at once cut at the root of the evil.'⁷³ The introduction of consular jurisdiction to Japan had been a grave mistake and 'its inefficacy to maintain order had been proved by experience.' He then gave ten reasons why 'it is illusory to hope for any satisfactory administration of justice from the Consuls arising in cases between their subjects and the inhabitants of the country.' Indeed, he contended, 'these treaties could hardly work effectively, even with the best machinery.' Given that French and British subjects managed to cope without such protection in South America, it seemed only reasonable that the number of consuls should at least be reduced, 'until the obsolete capitulations are done away with in Turkey, and

the treaties with other countries altered, so as not to be, as at present, sources of war and impunity for crime'.⁷⁴

The case made by Stanley was so openly hostile to consular jurisdiction that it marked, as Jennifer Pitts notes, 'a provocative moment in the Victorian debate over the scope of international law'.⁷⁵ He was certainly an unusual character, having converted to Islam in 1859 during his travels in the Middle East, and would go on to become Britain's first Muslim peer. Other essays in *The East and the West* discuss 'Islam as a Political System' and 'The Greek and the Russian Churches'. His disdain for compatriots abroad also shone through when he declared, 'no impartial Englishman, who has travelled and mingled largely with Foreigners, will deny, that as a nation we are extremely unpopular throughout the world.' His strongest indictment appeared in 'The Effects of Contempt for International Law', where he declared that 'in the nineteenth century "Civilisation" has taken the place of "Christianity" as a watchword, and pretext for aggression.' Exposing the 'fanciful divisions of civilised and uncivilised', he held up to ridicule the language often used to justify extraterritorial rights.⁷⁶

These themes resurfaced in *International Policy*, an ambitious early critique of empire published in 1866 by radical thinker Richard Congreve, founder of the Positivist movement in Britain.⁷⁷ In his view, relations between the East and West depended on curbing 'the freebooting tendencies of European commerce' by means of 'vigorous surveillance'. To that end, he argued, it would help if the government withdrew 'all protection from the unfair trader' and left him 'to the justice of those on whom at present he preys'.⁷⁸ Other essays addressed England's relations with 'France', 'The Sea', 'India', 'China', 'Japan', and 'The Uncivilised Communities'. Referencing

Alcock and the blue books presented to Parliament, the chapter on Japan criticized a treaty obtained by coercion, and 'the reckless adventurers who at present swarm in Yokohama and Shanghai'. The conclusions were hardly radical, however, merely urging restraint on merchants and diplomats, so that 'the Japanese may in course of time forget their animosity to foreigners.'⁷⁹

A decade on from the Treaty of Paris, there were at least some signs that the political debate was having an effect. Yet rather than follow the calls by Grey and Stanley to pare down overseas commitments, this usually involved recourse to the Foreign Jurisdiction Act, extending regulations over British subjects abroad. By Order in Council in 1865, for example, a new appellate tribunal, the British Supreme Court for China and Japan, was set up in Shanghai, again under (now Sir) Edmund Hornby as a circuit judge with all his experience from Constantinople.⁸⁰ Its creation was a pragmatic response to an anticipated 'failure of justice' in Yokohama, where a merchant called Alfred Browning had been accused of murder. With the longstanding ban on overseas travel still in place under Tokugawa law, his case presented the 'impossibility of sending the Japanese witnesses' to appear at the British Supreme Court in Hong Kong.⁸¹ In the Ottoman Empire, meanwhile, closer regulation of foreign subjects was helping to curb the number of passports held by protégés.⁸² For Britain the problem was also alleviated by the cession of the Ionian Islands to Greece in 1864. With the now finalized land code coming into force in 1867, and a new proposal for a system of mixed courts in Egypt, it all consolidated the impression that, even though the underlying issue of extraterritoriality had not really been addressed, the recent debate in Westminster on consuls and privileges was leading somewhere, and reform was underway.

III. Mixed Courts: the lesser evil?

Over the course of centuries, the capitulations in the Middle East had created a labyrinth of overlapping jurisdictions notoriously open to abuse. As an apocryphal tale in *The Times* describes:

We read in *The Roving Englishman in Turkey* an account of the bewildered Pasha whose duty it is to grant an audience to the members of the consular body in the capital of his Government, and before whom visitors in Austrian, French, Russian, and English uniforms make their appearance one after the other until, on a close inspection, the Pacha [*sic*] recognizes one and the same man under a variety of disguises.⁸³

This article, which appeared in 1868, goes on to cite a story from Stanley's *The East and the West*: 'At Damietta, for instance, there is a Levantine bent down under the weight of consular dignities; he represents at third hand fifteen or sixteen nations.'⁸⁴ Here was one of the so-called trading consuls, men of varying integrity, who juggled careers in diplomacy and business to carve out careers as 'professional' borderlanders. While many hailed from the countries they served, they also included 'legal chameleons' with multiple identities, motivated to some degree by the exemption from tax and immunity from local laws that consular status conferred.⁸⁵

As in the treaty ports of East Asia, expatriate communities held a mixed reputation in the Middle East. Only the month before, Sir Austen Henry Layard, the former permanent undersecretary at the Foreign Office, told the House of Commons how he had once 'blushed for the honour of my

countrymen' when called upon to support fraudulent claims for compensation during his days at the British Embassy in Constantinople. The foreign secretary, Lord Stanley – namesake but not the author of *The East and the West* – also deplored the 'intolerable abuse' of extending protection to protégés, 'for instance, in those cases in which Natives of the Ionian Islands have claimed the privilege'.⁸⁶ Writing for *The Times*, Antonio Gallenga explained, 'the only people who profit by the system are the ruffians, assassins, and thieves who render the streets of Pera and Galata unsafe after dark.'⁸⁷

This debate arose from the new proposal for mixed courts in Egypt. In a land where seventeen different authorities administered seventeen different codes, 'the perversions of consular Jurisdictions' (as the US consul-general called them in 1837) had created a 'state of judicial chaos'.⁸⁸ During his days as chief judge in Constantinople, Hornby could only sympathize with the British consul in Egypt, who had 'an extremely unruly lot of subjects to deal with, the riff-raff of Malta and of the Ionian Islands'.⁸⁹ The problem was most acute in the port city of Alexandria where the foreign population had grown exponentially in recent decades, reaching over 40,000 in the 1870s.⁹⁰

The aim of Nubar Pasha, Egypt's new minister of foreign affairs, was to persuade all seventeen powers to recognize a single mixed international tribunal for civil cases. This was a grander version of earlier schemes in Constantinople, where jointly administered assemblies had first appeared as early as 1820 in civil cases involving foreign merchants. Since 1840, mixed tribunals (*tidjaret*) had also been implemented for commercial cases between Turks and foreigners.⁹¹ In 1859, moreover, Sir Henry Bulwer, the British ambassador in Constantinople, had suggested a system of mixed courts with

a single code. Implicit in the plan was an agenda to link the extension of local judicial powers to the promise of Ottoman legal reform.⁹²

After the Treaty of Paris, an unsuccessful attempt had been made to introduce the Ottoman system of mixed commercial courts to Egypt as well. So now with construction of the Suez Canal underway, Nubar Pasha's vision seemed timely. There was little enthusiasm for the idea in Paris, however, when he delivered his proposals in 1867, but in London he found the Foreign Office more receptive. As Layard reminded the House of Commons the following year, Lord Stanley readily admitted 'the evils to which the present system of Consular jurisdiction in Egypt has given rise'.⁹³ Stanley himself conceded that, 'by degrees the authority of local tribunals had been usurped or set aside by the encroachments of an extra-territorial jurisdiction'.⁹⁴ Arguments for and against mixed courts appeared in *The Times*, some written by Nubar Pasha, while a letter by a Mr. Bell expressed the reservations of the British community in Egypt.⁹⁵ In the event, support from the British government was instrumental in creating the International Commission that convened in Cairo to discuss the plan in 1869, and by the spring of 1872 a general agreement was in place. Despite some French resistance, the new Mixed Courts were inaugurated in 1875, and from the outset were 'a success'.⁹⁶

The debate on extraterritoriality in 1868 exemplified Victorian politicians' struggle to reconcile stated principles with the application of justice. Ever since the Treaty of Paris, Lord Stanley insisted, 'all the Great Powers of Europe have concurred in the feeling that the exercise of this Consular jurisdiction was an anomaly which it was desirable to remove.' He even conceded, 'there is no doubt that jurisdiction extra territorial of that kind

is in itself an evil.' At the same time, he cautioned against Layard's suggestion of extending Nubar Pasha's model of mixed courts to Turkey, being such 'a very wide Empire' containing 'provinces in various stages of civilization'.⁹⁷ Instead, he saw the Egyptian plan as an experiment that, if successful, could be applied elsewhere, a reading that would frame British policy for years to come. For all his rhetoric, therefore, Stanley struck a pragmatic note in defence of consular jurisdiction, warning that 'it is a lesser evil' to keep a flawed but tried and tested system than to introduce a high-principled but unproven court 'which does not practically give justice'. This guarded response so incensed Gallenga that he told readers of *The Times*, 'even the most mitigated Mussulman justice must appear the lesser evil.'⁹⁸ It was also as a 'lesser evil' that a junior diplomat called Fukuchi Gen'ichirō, who travelled the world with the Iwakura Embassy in the early 1870s, would recommend adapting the Egyptian model of mixed courts for use in Meiji Japan.⁹⁹

Gallenga's outlook on international law has been described as 'strikingly more inclusive' than those of leading scholars in the field at the time.¹⁰⁰ He was clearly unimpressed by what he saw as Stanley's double standards: 'the mere fact that we choose to consider other people as barbarous or semi-barbarous', he insisted, 'does not entitle us to act as barbarians towards them.' Echoing Victorian anxiety over the trail of wars then following British trade across Asia, 'it was Christian bigotry or hypocrisy', he argued, 'that indisposed against us distant nations, and reared up against our trade those "walls" which had afterwards to be overthrown by violence.' Already Gallenga was adamant that 'there must be one jurisdiction in Turkey and Egypt, as there is one in France or England.'¹⁰²

Five years later in 1873, a conference of sorts was held in Constantinople to regulate the existing mixed commercial tribunals and, coinciding with the new system in Egypt, some modifications were inaugurated in 1875. These were practical amendments, however, so hardly amounted to the conference on extraterritoriality once promised in the Treaty of Paris.¹⁰³ In effect, they only entrenched the prevailing assumption that until some ‘standard of civilization’ was reached or a ‘deficit of civilization’ bridged, capitulations would remain.¹⁰⁴ In 1873, for example, the eminent international lawyer Friedrich Martens defended consular jurisdiction as a necessary instrument for enhancing the rule of law in ‘the East’. Extraterritoriality, he maintained, should be construed in terms of a civilizing mission, more as a duty than a privilege.¹⁰⁵ Consular courts, properly run by competent judges, were thus an exemplar for local tribunals. The foreign secretary, Lord Granville, spoke in similar terms when he hosted leading members of the Iwakura Embassy on their visit to London in 1872. Following the benchmark laid down by Lord Stanley, he explained that ‘in all such cases the policy of the British Government was to yield [to] the local authorities jurisdiction over British subjects in precise proportion to their advancement in enlightenment and civilization.’¹⁰⁶ This tenuous notion of measuring progress with scientific exactitude, however, would only ever amount to ‘conjectural policy’. Granville’s language promised fair treatment, but a ‘stable standard of civilization’ never emerged.¹⁰⁷

In East Asia as well, the British had shown some interest in mixed tribunals from an early stage. During the Second Opium War in 1856, Harry Parkes, the British consul in occupied Guangzhou, arranged for a local magistrate to attend in court. Dismissed as ‘little more than window dressing’

by the Chinese, a memorial to the emperor described how this official 'sits beneath the English and French judges, and although he is present, he is not allowed to talk, spit or smoke'.¹¹⁰ At the same time, British officials were perhaps aware of the questions raised on extraterritoriality in the recent Treaty of Paris, and plans for extending mixed commercial courts to Egypt. More than previous agreements in the region, the treaties that Lord Elgin signed at Tianjin and Yedo in 1858 show some effort to devise a collaborative style of dispute resolution, at least in civil cases.¹¹¹

Parkes experimented again in 1864 by working with local authorities to create the Shanghai Mixed Court, which presided over cases of Chinese defendants and those foreigners without consular protection of their own. Initially held in the British Consulate, this coexisted with the British Supreme Court set up by Hornby the following year.¹¹² At one point there was even talk of amalgamation, but despite a sympathetic reaction from Alcock, now the British minister in China, Hornby was unmoved.¹¹³ In 1867 the court relocated instead to a new building in the Nanjing Road. There, as the International Mixed Tribunal, it became a visible symbol of Chinese authority, projecting Qing sovereignty in the extraterritorial enclave of Shanghai. In practice, however, this only invited foreign intervention in local justice, without eroding consular jurisdiction. There were some attempts to curb the interference of foreign assessors, such as new regulations in 1869, and the Chefoo Convention in 1876, which tried to prevent them from passing judgment on Chinese defendants. Nevertheless, the tribunal was always a source of conflict, and even closed temporarily in 1885 after an assault on the British assessor by the local subprefect. It remained in operation until 1926, before finally being replaced by a court under sole Chinese control.¹¹⁴

In Japan, a joint approach to civil cases was suggested in the Treaty of Yedo but never resulted in formalized mixed courts.¹¹⁵ Examples of cooperation did occur, such as the 1865 Edelman-Shibaya case, the trial of a Japanese defendant held in the British Consulate with representatives present from both sides.¹¹⁶ Japanese officials thus attended consular courts, consuls attended local tribunals, and mediation was often used to settle disputes out of court.¹¹⁷ In 1866, however, the British diplomat Ernest Satow complained in the *Japan Times* that difficult cases were often referred to the Customs House, 'a place where justice to the foreigner is utterly unknown'.¹¹⁸ So critical were foreign residents of Japanese bankruptcy law that the British consul in Yokohama took up his call for a mixed court and proposed a joint tribunal the following year.¹¹⁹ Satow's articles were also translated into Japanese, and the subject resurfaced when the new Meiji government declared its intention to revise the treaties. Aware of British support for the idea, mixed courts then featured in the proposals for a draft treaty commissioned by Japan's Ministry of Foreign Affairs. It was also among the topics circulated by the British legation in Tokyo to consuls and firms in the treaty ports. As one response put it, 'the system of a mixed court, which has worked as well in China might we think be adapted with advantage in Japan.'¹²⁰ During his meeting in London with Iwakura Tomomi in 1872, Granville also 'referred to the case of Egypt where the extra-territorial jurisdiction had formerly prevailed, but where the experiment was being tried of allowing Egyptian tribunals to administer the law in civil cases.'¹²¹

The Japanese never showed any interest in the International Mixed Tribunal in Shanghai, but they took a close look at mixed courts in Turkey and Egypt. It was shortly after Iwakura's interview with Granville that

Fukuchi Gen'ichirō was sent to investigate.¹²³ He and his travelling companion, a Buddhist priest called Shimaji Mokurai, were the first visitors from Japan ever to reach Constantinople. Following their trip, Fukuchi presented a report advocating mixed courts along the Egyptian model, and further reports pursued the idea, despite some reservations expressed on key differences between Egypt and Japan.¹²⁴ In the 1880s, it also featured in Inoue Kaoru's strategy to rein in the problem of extraterritoriality when, as foreign minister, he hosted two multilateral conferences on treaty revision in Tokyo. The scheme was only abandoned in 1887, after a damning report by French legal expert Gustave Boissonade. Faced with public unrest at the prospect of foreign judges in Japanese courts, the hard-won agreement that Inoue had at last struck with the treaty powers rapidly collapsed.

In Europe, meanwhile, the debate on consular jurisdiction and mixed courts shifted away from the corridors of power in Westminster and was increasingly confined to legal circles. Two organizations that featured prominently, both founded in Belgium in 1873, were the Institut du Droit International, and the Association for the Reform and Codification of the Law of Nations (subsequently renamed the International Law Association). A commission set up by the Institute in 1874 conducted a survey on whether 'Eastern nations' could be admitted to 'the general community of international law'. Five years later, the English jurist Sir Travers Twiss reported to the fifth conference in Brussels that these states indeed shared with Europeans a common awareness of treaty obligations, but the moment had not yet arrived when they could dispense with consular jurisdiction.¹²⁵ As if to reinforce the point, a new foreign tribunal, the British Court for Japan, was established in Tokyo in the same year. A similar note was struck in a

discussion on extraterritoriality in 1878 at the Association's conference in Frankfurt. This occasion was also the first time that delegates from China and Japan attended such a gathering of international lawyers.¹²⁶ While Guo Songtao, the Chinese minister to Britain, appeared resigned to the current arrangements, Ueno Kagenori, his Japanese counterpart, sought clarification on the perceived rules of entry to the Comity of Nations, 'pressing for an opinion from the jurists of the west as to the touching point between the system of civilization and that of Orientalism'.¹²⁷ In a year when the Treaty of Berlin settled the Russo-Turkish War, however, the prospects for overhauling the capitulations seemed more remote than ever. At this juncture, those states encumbered with extraterritorial regimes remained paradoxically consigned to 'a permanent state of exception', apparently beyond the pale of international society, in a realm 'where "normal" rules did not apply'.¹²⁸

Conclusions

Whenever the people of the Gobi Desert complained, the Consul just laughed and said, 'it is in the treaty'. And when they suggested striking out the clause on consular jurisdiction, he 'laughed so much that we hoped he would be suffocated'. As the Consul explained, 'poor foolish people, revision gives no rights to *you*, it only gives rights to *us*'.¹²⁹ This allegorical tale appeared in 'Justice Abroad', an article in *The Fortnightly Review* in 1874. The author, a long-term English resident in France called Frederick Marshall, was now secretary to the Japanese legation in Paris, and enlisted in the service of the Meiji government's new campaign for treaty revision. In a scathing indictment of British foreign policy, he appealed to public opinion, 'a force more powerful than gunboats'.¹³⁰ It was hardly coincidence that his description

of extraterritoriality – ‘that barbarous word’ – echoed Grey’s address to the House of Lords a decade before.¹³¹

The Victorian public, however, no longer seemed unduly concerned by British foreign policy in Japan, certainly less so than in previous years when controversy reigned over impending conflict and the despatch of troops to Yokohama. Once again the Eastern Question was a more pressing issue, as another war loomed between the Ottoman Empire and Russia. Reports of Bulgarian Christians massacred by Ottoman troops also prompted William Gladstone to condemn the ‘intolerable vices’ of the Turks.¹³² The principled statements on capitulations made in Paris twenty years before, now seemed like a vision from the distant past. Extraterritoriality may have become a burning issue in Japan, but in Britain the question was only viewed within the parameters of a familiar debate. Regulations were being extended, new tribunals introduced, and the whole discussion had since moved on to implementing mixed courts anyway.

This compromise solution, however, was a double-edged sword; in practice the mixed courts sanctioned further encroachments on sovereign powers as much as they helped curb any excesses of consular jurisdiction. They also created an impression of reform in train, and even benevolent assistance, without confronting the underlying fault line of extraterritoriality once exposed in the Treaty of Paris.

The issue had receded in Victorian politics, and debate on justice abroad was increasingly confined to the esoteric circles of conferences on international law. Public awareness of this topic was also now gravitating elsewhere. The following decade, punctuated by some sharp exchanges

between Japanese newspapers and the local English language press, the conference that never was in Constantinople ultimately convened in Tokyo.

In most cases, the subsequent campaigns against extraterritoriality would continue well into the twentieth century, so they naturally form a theme of resistance often associated with later generations. Yet as this analysis shows, there was a significant level of political unease over the issue in mid-Victorian Britain. Already some critics were keenly aware of the contradictions implicit in an international order that selectively withheld full recognition from a particular group of new member states. In the short term this controversy had a limited influence on policy, focusing attention on extending regulations for British subjects abroad, and fostering experiments with mixed courts. It was thus deflected and largely absorbed within an engrained official culture, invariably at cross-purposes with fresh attempts to revisit the judicial arrangements in the treaties. Content to paper over the cracks in the existing system, the Foreign Office seemed less inclined to engage with its structural flaws. Nevertheless, this political discourse not only stimulated debate in the realm of international law, but informed the outlook of states affected by consular jurisdiction themselves. In effect, it prefigured a growing realization that the foundations of extraterritorial regimes were not quite as sound as their proponents often supposed.

¹ Augustus H. Oakes and Robert B. Mowat (eds), *The Great European Treaties of the Nineteenth Century* (Oxford, 1918), 177.

² 'The Plenipotentiaries, then, unanimously recognize the necessity of revising the Capitulations, and decide upon recording in the Protocol their wish that a

deliberation should be opened at Constantinople.' *Protocols of Conferences Held at Paris Relative to the General Treaty of Peace* (London, 1856), 59.

³ Eliana Augusti, 'From Capitulations to Unequal Treaties: The Matter of an Extraterritorial Jurisdiction in the Ottoman Empire', *Journal of Civil Law Studies*, xxiv, no. 2 (2011), 286, 307.

⁴ This 'inner circle' was Sir Travers Twiss's interpretation of *civitas maxima*, twisting the universalist interpretation encompassing 'all nations' previously used by Christian Wolff in the eighteenth century. Jennifer Pitts, 'Empire and Legal Universalisms', *The American Historical Review*, xvii, no. 1 (2012), 101.

⁵ Though sometimes traced to 1862, the term 'Comity of Nations' was in use earlier. For example, Harris to Cass, 11 Sep. 1858, [City University of New York], T[ownsend] H[arris] C[ollection] Letterbook 4, Correspondence no. 30.

⁶ Westphalian sovereignty denotes a state's exclusive control of domestic authority structures within its territories. Stephan Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, 1999), 20-25.

⁷ Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge, 2010), 7.

⁸ This kingdom was largely under British and subsequently American protection until its demise in 1893. Lorenz Gonschor, 'Ka Hoku o Osiania: Promoting the Hawaiian Kingdom as a Model for Political Transformation in Nineteenth-Century Oceania' in Sebastian Jobs and Gesa Mackenthun (eds), *Agents of Transculturation: Border-Crossers, Mediators, Go-Betweens* (Münster, 2013), 159.

⁹ The origins of this practice of granting consuls judicial authority over their fellow countrymen can be traced to medieval times in the Mediterranean world. Andreas T. Müller, 'Friedrich F. Martens on "The Office of Consul and

Consular Jurisdiction in the East''', *The European Journal of International Law*, xxv, no. 3 (2014), 878.

¹⁰ 'These concessions, it is true, were not extorted from the weakness of later Sultans; they are rather relics of a time when the House of Othman was the terror of Europe.' 'Turkey (from our correspondent)', *The Times*, 3 May 1854, 10. Formerly personal grants, capitulations became contractual terms in the 1740 treaty with France. Augusti, *From Capitulations to Unequal Treaties*, 292.

¹¹ Consular jurisdiction did not feature in the 1842 Treaty of Nanjing after the First Opium War, but first appeared in the 1843 Supplementary Treaty of the Bogue.

¹² The 1843 Foreign Jurisdiction Act was devised primarily to address legal issues arising from the abolition of the English Levant Company in 1825. Kayaoğlu, *Legal Imperialism*, 44.

¹³ Although precursors existed, such as the head of the Dutch factory at Dejima, 'consul' was a new term in Japan, so consular jurisdiction began with the opening of the treaty ports. Michael Auslin, *Negotiating with Imperialism: The Unequal Treaties and the Culture of Japanese Diplomacy* (Cambridge MA, 2004), 25.

¹⁵ Teemu Ruskola, *Legal Orientalism: China, the United States and Modern Law* (Cambridge MA, 2013), 140.

¹⁶ For example, Kayaoğlu, *Legal Imperialism*; Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford, 2012).

¹⁷ Ruskola, *Legal Orientalism*, 204; Kayaoğlu. *Legal Imperialism*, 188, 198.

¹⁸ See for example, Jodie A. Kirshner, 'Why is the U.S. Abdicating the Policing of Multinational Corporations to Europe? Extraterritoriality, Sovereignty, and

the Alien Tort Statute', *Berkeley Journal of International Law*, xxx, no. 2 (2012), 259-302.

¹⁹ Mariya T. Slys, *Exporting Legality: The Rise and Fall of Extraterritorial Jurisdiction in the Ottoman Empire and China* (online edition, Geneva: Graduate Institute Publications, generated 16 Sep. 2014), 52.

²⁰ Jasper Brinton, *The Mixed Courts of Egypt* (New Haven, 1968), 25, 208; Ruskola, *Legal Orientalism*, 203, 308-9.

²¹ William M. Ballantyne, *Essays and Addresses on Arab Laws* (London, 2000), 127.

²² Pitts, 'Empire and Legal Universalisms', 112.

²³ Henry Wheaton, *Elements of International Law* (Philadelphia, 1836), 98.

²⁴ *Ibid.*, 109-10.

²⁵ Scholars in East Asia often understood these Western ideas in terms of natural law, which shared points of reference with their own Confucian outlook. Ohira Zengo, 'Japan's Reception of the Law of Nations', *The Annals of the Hitotsubashi Academy*, iv, no. 1 (1953), 58, 62-63. Positive law never fully supplanted natural law, which continued to inform Victorian theorists' universalist aspirations for the European legal model. Jennifer Pitts, 'Boundaries of Victorian International Law' in Duncan Bell (ed), *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (Cambridge, 2007), 69.

²⁶ For example, Nishi Amane studied at Leiden (1863-65) and published notes from lectures by Simon Vissering in 1868. Fukuchi Gen'ichirō travelled to England and France (1865-66) and published a translation of Carl von Marten's *Guide Diplomatique* in 1869.

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- ²⁷ Aberdeen to Heytesbury, no. 22, 31 Oct. 1829, [Kew, United Kingdom National Archives, Public Record Office], F[oreign] O[ffice Records] 181/78; British Library, Aberdeen MSS, Additional MSS 43089, fo. 110.
- ²⁸ For example 'The Treaty of Adrianople', *The Times*, 28 June 1854, 9; 'Further English Extracts, by the Steamer Asia at this Port', *New York Daily Times*, 14 July 1854, 2.
- ²⁹ 'Turkey (from our own correspondent)', *The Times*, 3 May 1854, 10.
- ³⁰ 'Turkey (from our own correspondent)', *The Times*, 11 Sep. 1854, 8.
- ³¹ Sir Edmund Hornby, *Sir Edmund Hornby: An Autobiography* (Glasgow, 1929), 93.
- ³² *Turkey: Being Sketches from Life*, by the Roving Englishman (first published 1855, London, 1877), 74; On Grenville-Murray's chequered career see Geoffrey R. Berridge, *Diplomatic Whistleblower in the Victorian Era: The Life and Writings of E. C. Grenville-Murray* (online publication, 2nd edition: grberridge.diplomacy.edu, Dec. 2014).
- ³³ Law Officers to Russell, 30 July 1860, FO 83/2298, fo. 70.
- ³⁴ Hornby, *Sir Edmund Hornby*, 138.
- ³⁵ Kayaoğlu, *Legal Imperialism*, 121.
- ³⁶ Hornby, *Sir Edmund Hornby*, 94.
- ³⁷ In the decade after the Crimean War alone, British forces saw action in, among other places, India, China, Sarawak, New Zealand, the Gold Coast, Siam, Japan, Bhutan, Jamaica, Arabia and Canada. Byron Farwell, *Queen Victoria's Little Wars* (London, 1973), 134-37, 163.
- ³⁸ See Gregory Claeys, 'The "Left" and the Critique of Empire c. 1865-1900: Three Roots of Humanitarian Foreign Policy' in Bell (ed), *Victorian Visions of Global Order*, 239-66.

³⁹ A general election returned Palmerston to power, defeating the Manchester School, and the war continued, with some interruption, until 1860. 'China', Commons debate, 26 Feb. 1857, *Hansard*, vol. 144, cols. 1391-1421.

⁴¹ John Y. Wong, *Deadly Dreams: Opium, Imperialism and the Arrow War (1856-1860) in China* (Cambridge, 1998), 4-5, 44-45, 53-54, 78.

⁴² In Russian a *ukase* is an imperial edict. 'China', Commons debate, 26 Feb. 1857, *Hansard*, vol. 144, col. 1410.

⁴³ 'China – Address for Papers', Lords debate, 19 Feb. 1861, *Hansard*, vol. 161, cols. 550, 581.

⁴⁴ Pitts, 'Boundaries of Victorian International Law', 67.

⁴⁵ Francis William Newman, 'Our Relation to the Princes of India', *Westminster Review*, lxxix (1858), 463.

⁴⁶ *Hertslet's Commercial Treaties* (31 vols., London, 1864), xi. 90, 398.

⁴⁷ Sir Rutherford Alcock, *The Capital of the Tycoon: A Narrative of a Three Years' Residence in Japan* (2 vols., London, 1863), i. 199-200.

⁴⁸ William G. Beasley (ed), *Select Document on Japanese Foreign Policy, 1853-1868* (London, 1955), 161.

⁴⁹ 'Japan – Resolutions', Lords debate, 1 July 1864, *Hansard*, vol. 176, col. 574.

According to Harris, Elgin 'informed the Japanese commissioners, that if they delayed the execution of the treaty, he should go away, and soon return at the head of a fleet of fifty ships'. Harris to Cass, 11 Sep. 1858, THC, Letterbox 4, Correspondence no. 30. Harris's own informant was presumably his interpreter Henry Heusken, who Elgin had borrowed for these talks, but no such threat appears in the convivial negotiations recorded by Laurence Oliphant in his *Narrative of the Earl of Elgin's Mission to China and Japan in the Years 1857, '58' '59* (Edinburgh and London, 1859).

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- ⁵⁰ 'Japan – Address for papers', Lords debate, 10 July 1863. *Hansard*, vol. 172, col. 524.
- ⁵¹ Yuki A. Honjo, *Japan's Early Experience of Contract Management in the Treaty Ports* (Folkestone, 2003), 34.
- ⁵² 'Japan – Address for papers', Lords debate, 10 July 1863. *Hansard*, vol. 172, cols. 524-525. Alcock's text reads: 'Nowhere is there a greater influx, unless it be at some gold-diggings, of the lawless and dissolute of all countries.'
- Alcock, *The Capital of the Tycoon*, ii. 33.
- ⁵³ George Smith, Bishop of Victoria (Hong Kong), *Ten Weeks in Japan* (London, 1861), 263.
- ⁵⁴ 'Japan – Address for papers', Lords debate, 10 July 1863. *Hansard*, vol. 172, col. 531.
- ⁵⁵ Francis C. Jones, *Extraterritoriality in Japan* (New Haven, 1931), 54.
- ⁵⁶ Henry E. J. Stanley (ed), *The East and the West: Our Dealings with our Neighbours* (London, 1865), 12.
- ⁵⁷ Alcock, *The Capital of the Tycoon*, ii. 29.
- ⁵⁸ *Ibid.*, 30.
- ⁵⁹ On Richardson's reputation and possible culpability, see Mitsuru Hashimoto and Betsey Scheiner, 'Collision at Namamugi', *Representations*, no. 18 (1987), 76-77.
- ⁶⁰ Smith, *Ten Weeks in Japan*, 258.
- ⁶¹ 'Mr. Cobden on the Japanese Question', *The Times*, 10 Nov. 1863, 6.
- ⁶² 'Bombardment of Kagoshima – Resolution', Commons debate, 9 Feb. 1864, *Hansard*, vol. 173, col. 341.
- ⁶³ Sir John Hay, 'The Attack on Tringanu', Commons debate, 10 July 1863, *Hansard*, vol. 172, col. 587.

⁶⁴ Alcock was criticized for an escapade at a coalmine in Hizen, which Grey also referred to in his speech to the Lords on 1 July. *Diplomacy in Japan: Correspondence Respecting Japan* (London, 1864), 41; Alcock, *The Capital of the Tycoon*, ii. 79.

⁶⁵ *Diplomacy in Japan*, 8.

⁶⁶ *Ibid.*, iii.

⁶⁷ A turning point was the *Lady Hughes* case in 1784 when a gunner was executed for accidentally killing a Chinese resident while firing a salute. The episode dissuaded the East India Company from handing over British criminal suspects thereafter. Cassel, *Grounds of Judgment*, 43.

⁶⁸ *Diplomacy in Japan*, iii.

⁷⁰ ‘Japan – Resolutions’, Lords debate, 1 July 1864. *Hansard*, vol. 176, cols. 585, 589.

⁷¹ *Japan Commercial News*, 7 Sep. 1864, 14 Sep. 1864. The original English articles are not held at the Yokohama Archives of History and may no longer exist. The Japanese translations by Mitsukuri Rinshō are held at Keiō University and reproduced in Kitane Yutaka (ed), *Nihon shoki shinbun zenshū* (64 vols., Tokyo, 1987), iv. 151-53, 169-72.

⁷² Stanley, *The East and the West*, 10, 11.

⁷³ *Ibid.*, 25, 32, 49.

⁷⁴ *Ibid.*, v, 29, 47-49.

⁷⁵ Pitts, ‘Boundaries of Victorian International Law’, 79.

⁷⁶ Stanley (ed), *The East and the West*, 115, 265. The Bishop of Victoria expressed similar views in 1861: ‘Europeans in every part of the world...demean themselves with the air of a superior and conquering race even in countries where they are strangers barely tolerated by the governing powers and are

regarded (sometimes with the semblance of real truth) as inferiors in civilisation.’ Smith, *Ten Weeks in Japan*, 258.

⁷⁷ Claeys, ‘The “Left” and the Critique of Empire’, 240.

⁷⁸ Richard Congreve, ‘The West’ in idem (ed), *International Policy: Essays on Foreign Relations in England* (London, 1866), 17, 42-43.

⁷⁹ Charles A. Cookson, ‘England and Japan’ in *ibid.*, 512-13.

⁸⁰ Hornby, *Sir Edmund Hornby*, 193.

⁸¹ Law Officers to Russell, 25 June 1864, FO 83/2298, fo. 262.

⁸² Hornby, *Sir Edmund Hornby*, 97. See also Sibel Zandi-Sayek, ‘Ambiguities of Sovereignty: Property Rights and Spectacles of Statehood in Tanzimat Izmir’, in Sahar Bazzaz, Yota Batsaki and Dimiter Angelov (eds), *Imperial Geographies in Byzantine and Ottoman Space* (Washington, DC, 2013) [Accessed 15 March 2016].

⁸³ ‘The East and the West’, *The Times*, 24 Aug. 1868, 8. This embellishes the original account set off the island of Kos, which describes how the man represented seven consulates but mentions him wearing only French and Austrian uniforms. The Roving Englishman [Grenville-Murray], *Turkey*, 276.

⁸⁴ John Ninet, ‘Modern Christendom in the Levant’ in Stanley (ed), *The East and the West*, 91.

⁸⁵ Ziad Fahmy, ‘Jurisdictional Borderlands: Extraterritoriality and “Legal Chameleons”’, *Comparative Studies in Society and History*, lv, no. 2 (2013), 310.

⁸⁶ ‘Consular Courts in Turkey and Egypt – Observations’, Commons debate, 10 July 1868, *Hansard*, vol. 193, cols. 1035, 1050. Henry Stanley (later Baron Stanley of Alderley) came from a separate branch of the Stanley family to that of Edward Stanley (foreign secretary and later Earl of Derby).

⁸⁷ Gallenga borrows but does not reference this phrase by Stanley. 'The East and the West', *The Times*, 24 Aug. 1868, 8. Stanley elaborates: 'all the wine-shops and coffee-houses kept by Ionians, Maltese, Greeks and others, are closed to the police. The wine-shops are the rendezvous of robbers, murderers, and other criminals, who are more secure there than criminals were formerly in the sanctuaries of Alsatia and Savoy.' Stanley (ed), *The East and the West*, 4, 36.

⁸⁸ The US consul-general reported that '\$1000 was offered by two separate parties in Damiata [Damietta] to obtain the vice consular agency.' Fahmy, 'Jurisdictional Borderlands', 315; Brinton, *The Mixed Courts of Egypt*, 9.

⁸⁹ Hornby, *Sir Edmund Hornby*, 172.

⁹⁰ Fahmy, 'Jurisdictional Borderlands', 313.

⁹¹ Brinton, *The Mixed Courts of Egypt*, 6-8.

⁹² Kayaoğlu, *Legal Imperialism*, 123.

⁹³ 'Consular Courts in Turkey and Egypt – Observations', Commons debate, 10 July 1868, *Hansard*, vol. 193, col. 1045.

⁹⁴ Stanley to Stanton, 18 Oct. 1867, FO 78/1975, Despatch no. 40 (no folio number).

⁹⁵ Brinton, *The Mixed Courts of Egypt*, 14.

⁹⁶ *Ibid.*, 27. For example Lord Granville commented, 'the establishment of Mixed Courts has worked well in Egypt.' Granville to Plunkett, 11 Jan. 1884, [Kew, United Kingdom National Archives, Public Record Office], P[ublic] R[ecord] O[ffice Confidential Print] 30/29/313, Part vii, 12.

⁹⁷ 'Consular Courts in Turkey and Egypt – Observations', Commons debate, 10 July 1868. *Hansard*, vol. 193, cols. 1050, 1052.

⁹⁸ 'The East and the West', *The Times*, 24 August 1868, 4.

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- ⁹⁹ Nakaoka San'eki, 'Fukuchi Gen'ichirō no Ejiputo kongō saiban chōsa', *Kokusai shōka daigaku ronso*, no. 32 (1985), 48.
- ¹⁰⁰ Pitts, 'Boundaries of Victorian International Law', 79.
- ¹⁰² 'The East and the West', *The Times*, 24 Aug. 1868, 4.
- ¹⁰³ Augusti, 'From Capitulations to Unequal Treaties', 303.
- ¹⁰⁴ Gerrit W. Gong, *The Standard of "Civilization" in International Society* (Oxford: Clarendon Press, 1984), 115; Augusti, 'From Capitulations to Unequal Treaties', 289.
- ¹⁰⁵ Müller, 'Friedrich F. Martens', 881-82.
- ¹⁰⁶ Memorandum of an Interview between Earl Granville and Iwakura, Chief Japanese Ambassador, at the Foreign Office, 27 November 1872, FO 881/2138, 2. Criminal jurisdiction was extended to the mixed courts in Egypt for bankruptcy cases in 1900. By the late 1930s a criminal code was in place to replace consular jurisdiction but remained largely inoperative. Brinton, *The Mixed Courts of Egypt*, 89, 107, 192.
- ¹⁰⁷ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1871-1960* (Cambridge, 2004), 134-35.
- ¹¹⁰ Cassel, *Grounds of Judgment*, 58.
- ¹¹¹ See Article XVII of the Treaty of Tianjin, and Article VI of the Treaty of Yedo. *Hertslet's Commercial Treaties*, xi. 90, 398.
- ¹¹² This court handled minor criminal cases as well as civil suits, reflecting British acceptance of the Chinese reading on administering justice jointly 'on both sides' in the Treaty of Tianjin. Cassel, *Grounds of Judgment*, 59, 66-67.
- ¹¹³ *Ibid.*, p. 70.
- ¹¹⁴ *Ibid.*, 69, 79, 82-83, 178; Ruskola, *Legal Orientalism*, 185.

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- ¹¹⁵ Morita Tomoko, 'Bakumatsu ishin-ki no ryōji saiban to minji soshō tetsuzuki', *Rekishi hyōron*, no. 604, (2000), 15.
- ¹¹⁶ *Ibid.*, 17-19.
- ¹¹⁷ *Ibid.*, 21.
- ¹¹⁸ *The Japan Times*, 19 May 1866, reproduced in Grace Fox, *Britain and Japan, 1858- 1883* (Oxford, 1969), 573.
- ¹¹⁹ Satow called Article VII on the recovery of debts and punishment of fraudulent debtors a subject 'too painful to foreign creditors to discuss in detail'. *Ibid.*; James E. Hoare, *Japan's Treaty Ports and Foreign Settlements: The Uninvited Guests, 1858-1899* (Folkestone, 1994), 62.
- ¹²⁰ Howell & Co. to Troup, 19 Dec. 1871, FO 46/151, fos. 97-98.
- ¹²¹ Granville continued, 'if this experiment succeeded, it would be tried in criminal cases also, and there was no reason why a similar course should not be taken with Japan.' Interview between Granville and Iwakura, 27 November 1872, FO 881/2138, 2.
- ¹²² Nakaoka, 'Fukuchi Gen'ichirō, 52.
- ¹²³ In 1873, for example, the Ministry of Justice concluded that Japan already enjoyed more rights than Egypt. Naganuma Hideaki, 'Naigai shosō kara mita nihon no saibanken mondai', *Rekishi hyōron*, no. 604 (2000), 37.
- ¹²⁴ Sir Travers Twiss, 'Rapport', in *Annuaire de l'Institut de Droit International (1879-1880)* (2 vols., Brussels, 1880), i. 302, 304.
- ¹²⁵ Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History* (Cambridge, 2014), 1.
- ¹²⁶ 'Extra-territoriality', *The Japan Weekly Mail*, 19 Oct. 1878, 1,093.
- ¹²⁷ Ruskola, *Legal Orientalism*, 141.
- ¹²⁸ Frederick Marshall, 'Justice Abroad', *The Fortnightly Review*, July 1874, 143.

¹³⁰ Ibid., 145.

¹³¹ Frederic Marshall, *International Vanities* (Edinburgh, 1875), 265.

¹³² William Gladstone, *Bulgarian Horrors and the Question of the East* (London, 1876), 12.