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Review of *The Justice of the Western Consular Courts in Nineteenth Century Japan*

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JAPAN

The Justice of the Western Consular Courts in Nineteenth-Century Japan. By RICHARD T. CHANG. Westport, Conn.: Greenwood, 1984. xiv, 183 pp. Tables, Appendix, Notes, Bibliography, Index. \$35.

Richard Chang attacks the generalization accepted by many historians that the Western consular tribunals in nineteenth-century Japan were so partial—toward Westerners and against Japanese—that they seldom rendered evenhanded justice. His study

required two steps. First he tried to determine how many “mixed” cases came to trial—cases in which a Japanese brought a claim against a foreign resident in a consular court or was the complaining party in criminal proceedings against a foreigner.

Between 1875 and 1895 there were five such cases that were widely reported and commented on at the time, and that have often been cited as examples. (All were decided by British consular courts.) Ten years of painstaking research led Chang to references from which he estimates that a total of about 2,800 mixed cases came before British and American consular courts, and that about 700 mixed cases came before other Western consular courts during the period of extraterritoriality—from 1859 to 1899.

Chang’s next step was evaluating these decisions for “fairness.” In the course of his extensive research he was able to locate meaningful accounts—some of them very brief—of only nine cases in addition to the five that had previously been widely known. On the basis of his analysis of these fourteen cases he concludes that not more than 1 percent of all consular cases may have been adjudicated unfairly. (Although his sample for careful analysis is infinitesimal, he argues that the pattern of newspaper coverage of the fourteen cases would indicate that unreported cases were unlikely to have presented egregious examples of unfairness.)

After a brief overview of the extraterritorial arrangements of the various powers that maintained commercial relations with Japan in the nineteenth century (Chang devotes about four pages each to the British and American courts, and from half a page to a few lines to each of the others), the body of the book (91 of 137 pages of text) is devoted to good, detailed studies of each of the five well-publicized cases. These include a case of rape in 1875, two related opium-smuggling cases in 1878, the prosecution of Captain Drake in 1886 in connection with the death of Japanese passengers when his ship sank, and a suit in 1893 against the P&O Lines for colliding with and sinking a Japanese torpedo boat.

The background information Chang supplies is helpful. The Hartley prosecutions cannot be understood without grasping that, for the British, they involved larger questions of treaty interpretation and were seen as an attempt by the Japanese to nibble away at the absolute extraterritorial jurisdiction of England. As for the Drake case, Chang shows that there was inadequate reporting at the time of the fact that there were two proceedings: in one, a naval board of enquiry that lacked the authority to punish simply considered whether there were grounds for dismissal of members of the crew (none was found); in the other, a consular criminal proceeding, the captain was found guilty, and received an arguably light three-month sentence. A contemporary Japanese publicist wrote, referring to the board of enquiry, “The British judge in Kobe acquitted Drake of any wrongdoing.” Historians today repeat the error: Shimomura Fujio observed that, “in November the British consular court at Kobe exonerated the master of any wrongdoing,” and Inoue Kiyoshi, that “the British consul decided that the master had fully discharged his duties, and adjudged him not guilty” (p. 91). A balanced description of the consular court’s handling of the matter might well have included the remarks of the judge when passing sentence: “We have been accustomed to expect from the merchant service of England heroism and devotion to the interests of the crew and passengers, that I am afraid in this case were wanting” (p. 90).

In this case, as in each of the others, Chang attempts to evaluate objectively the sentence given. He tried to determine what would have happened had the complaining party been foreign, but found no similar examples in British naval history. He did discover a comparable American case in which the defendant received a sentence of six months. Chang also compares the Drake sentence with contemporary sentences for

manslaughter in England and finds that while the sentence of three months was below the median (six months to one year), it was in line with a substantial number of sentences. He concludes that "the Drake case does not therefore support the interpretation that the Western consular courts in Japan as a rule did not render evenhanded justice" (p. 98).

This book is a welcome addition to the literature. The exhaustive research that went into collecting the statistical data is unlikely to be duplicated, and will provide a framework within which argument may continue concerning the substance of individual cases. What seems clear is that the cases we know about—according to Chang, only fourteen, of which some were sketchily reported—are certainly an insufficient basis for generalizing about the handling of the run-of-the-mill cases among the total of 3,500 he estimates passed through these courts. Friction is inevitable when extraterritoriality is in effect. Even if the Japanese had understood in an adequate way the procedures followed, their ultimate response to the judgments would have been determined by whether a criminal sentence was lighter or a civil recovery smaller than they would have been in Japanese courts—regardless of their similarity to penalties imposed in England. Other questions remain, such as the role of consular justice as a model for Japanese jurists as they were working out the contours of their own modern legal system. Did what they saw of the Western approach lead them to preserve a Japanese approach to the Western-style institutions they created? Did it reinforce their feeling that their methods of handling disputes were superior? Chang's book shows that, unfortunately, the paucity of material from the consular courts may make it impossible to go much deeper into this interesting field.

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