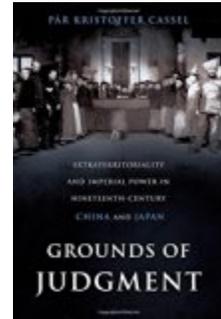


Pär Kristoffer Cassel. *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan*. Oxford: Oxford University Press, 2012. 304 S. \$39.95 (cloth), ISBN 978-0-19-979205-4.

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## Cassel: Grounds of Judgment

Pär Cassel's 'Grounds of Judgment' is a detailed and intricate study of a neglected field, focusing on extraterritoriality and consular jurisdiction in the treaty ports of Japan and China. Extraterritoriality (the legal right to subject one's own nationals to national law in a foreign country) was a key component of Western and Japanese imperial and (semi-)colonial experience in China and, to a far lesser extent, in Japan itself. The importance of extraterritoriality and the dearth of literature makes Cassel's 'Grounds of Judgment' both a refreshing and significant piece of work.

Drawing upon an analysis of China and Japan's legal traditions, local legal wrangles and the process of legal modernization, 'Grounds of Judgment' explores how extraterritoriality came to being, how it worked, and why the development and process of extraterritoriality was ultimately different in Japan and China. Importantly, picking up from recent trends in transnational colonial legal studies, Cassel uses a convincing model of a triangular relationship of China, Japan and the West as an important conceptual lens to understand the whole process of the differing trajectories of the extraterritorial process in Japan and China. In other words, he examines treaty negotiations, and the operation of extraterritoriality in practice of the West and China, the West and Japan and Japan and China, highlighting the developments and connections between all three parties in the history of extraterritoriality. This approach quite rightly avoids the deterministic models of bilateral relations and national histories and offers more insight into the transnational

and transhistorical ways multiple actors and processes served to create and develop extraterritoriality conceptually and practically.

Cassel begins this analysis in the first two chapters by examining China and Japan's legal traditions and early treaty negotiations of extraterritoriality between Western imperial powers and China. He shows how China and Japan's legal traditions were familiar with legal pluralism and personal jurisdiction, rather than a unifying territorial jurisdiction. In China, this was evident in its long tradition of mixed court tribunals in its borderlands with Russia and in the ethno-legal differentiation of Manchu peoples. A type of consular jurisdiction had already been established in Macao, where the Portuguese had been allowed since the mid-seventeenth century to exercise legal jurisdiction in cases involving Portuguese plaintiffs and Portuguese defendants. As well as providing a necessary revision of how we understand Japan and China's legal past, Cassel also argues that this plural legal tradition paved the way conceptually for the Qing authorities and Japanese officials to actively consent to the creation of mixed courts and the idea of foreign consular jurisdiction in the nineteenth-century treaty ports. This brings a fresh understanding of how we can interpret the beginnings of extraterritoriality in China. Perhaps we should view extraterritoriality and its establishment as more of a sort of continuation or borrowing from tradition, albeit one that was to become far more onerous to the Chinese state and people in the years after its establishment.

Moving on from an analysis of establishment of extraterritoriality, Cassel proceeds to show in the next few chapters how extraterritoriality operated in practice. Firstly, there is a study of the mixed court and British Supreme Court for China in Shanghai (chapter 3) which is followed by a more in-depth study of mixed court cases in Japan (chapter 4 and 5). Ultimately, Cassel insists, we must refrain from viewing extraterritoriality as a monolithic system or a transplant; the trajectory and development of extraterritoriality in China and Japan was formed through different local disputes, institutions and local power, as well as through an ongoing triangular process of treaty negotiations and warfare, and practical process of legal jurisdiction (involving China, Japan and the West, depending on the context). Domestic legal reform movements particularly in Japan played an important role in shaping its course.

The eventual abolition of extraterritoriality in the twentieth century takes up the final chapters of the book and it is here that 'Grounds of Judgment' rounds up how China and Japan differed in their extrication from extraterritoriality. Cassel stresses that it was the process of treaty negotiations (and treaty revision), between Japan, China and the West, and moreover the different ways the indigenous legal order was overhauled and centralized, which led Japan to rid itself of extraterritoriality faster than China. Indeed, after 1895 Japan was to gain its own extraterritorial status in China. China, for its part, struggled to abolish extraterritoriality for a number of reasons, such as being initially far more accepting of mixed court jurisdiction and of the integration of these mixed courts into the Chinese legal system. Japan, conversely, contested some of these legal rights and treaties more assertively from an early stage, did not allow an integration of mixed courts into its own native court system and chose to discount this form of plural jurisdiction when reforming and centralizing its legal system in later years.

Without a doubt, given the dearth of literature on the subject, 'Grounds of Judgment' is a vital study on the legal history, the process of extraterritoriality, and the

legacies of imperialism in China and Japan in the nineteenth and twentieth centuries. Through an exploration of the triangular relationship between China, Japan and the West, a more sophisticated understanding of imperialism emerges, and one that adds significantly to our understanding of legal development, legal tradition, imperialism and international relations through a process of interacting actors. Japan, China and the West were inextricably linked in the formation, maintenance and ending of extraterritoriality which was in turn at the heart of the foreign encroachments on Chinese and Japanese soil.

Whilst Cassel's book is an absorbing, highly detailed and informative, a more intricate examination of the working of the courts, especially of the Western courts in China is missing, and one may want to question Cassel's classification of the 'West' as a singular entity, or at least have the terminology clarified a little more. Additionally, whilst Cassel's analysis of China's plural legal background is an excellent piece of research into the treaty negotiations of extraterritoriality (and by far one of the best and most comprehensive so far), one may want to question the extent of how easily a conceptual transition was achieved between its legal traditions and a wholesale complicity or acceptance of the nineteenth century extraterritorial 'unequal' treaties and practices on the part of Qing and Japanese officials.

Indeed, extraterritoriality is vitally important not just in its historical context but for its legacy of extraterritoriality in Japan and especially China today, and Cassel rightly picks up this point in his concluding remarks. Why extraterritoriality and its legacy are important today is easy to see. It still shapes the way in which China's political and legal elite understand and express its national sovereignty and how it staunchly criticizes foreign intervention has its roots in its legacy, and will indeed continue to be an important feature of China's legal and political life for a long time to come. 'Grounds of Judgment' is a must read book for an understanding of both Japan and China's past and its present.

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