CHAPTER EIGHT

THE END OF EXTRA-TERRITORIALITY

The *Chishima cases* overlapped with the final negotiations surrounding the 1894 Treaty which brought British extra-territoriality to an end; but the road to this treaty had been long and tortuous, pitted with pot-holes and lined with many a diversionary cul-de-sac. While Parkes suggested that ‘there was no surprise on the one hand and no concession on the other when extra-territoriality was established by the treaties of 1858’,¹ the subject was to form a backdrop to all Japan’s foreign dealings from the late 1860s until the nineteenth century’s end.

Although just one of several countries with extra-territorial rights, Britain was ‘the only Power which ... made entirely adequate provision for the discharge of the duties imposed upon foreign nations by the necessity of exercising Consular jurisdiction’.² Nevertheless, as the *Ansei*—and most subsequent—treaties included ‘most favoured nation’ clauses, it would be necessary for Japan to re-negotiate all these treaties in order to secure the complete abolition of Western extra-territorial rights.³ However, given Britain’s contemporary predominance amongst the foreign nations in Japan, it looked first to secure British agreement before negotiating the surrender of other countries’ extra-territorial rights and it is upon the Anglo-Japanese discussions that this chapter focuses—principally from the standpoint of the British records.

There are no references in the British diplomatic files before the late-1860s of any Japanese wish to end extra-territoriality—or, even, complaints about it—but, with the Meiji Restoration, the subject came to hover in the background of all Japan’s overseas dealings. Japan concluded treaties with Spain, the North German Confederation and Sweden and Norway along the lines of the *Ansei* treaties immediately after the Meiji

² Plunkett to Granville, 2 July 1884; FO881/5072.
³ A point emphasized in 1873 when Japan negotiated a new treaty with Italy which abolished Italian extra-territoriality and provided Italians with rights of access to Japan’s interior. The other Powers, led by Parkes, simply claimed similar rights of access by virtue of the Treaty’s ‘most favoured nation’ article whilst not yielding their extra-territorial rights. This meant that Japan would not implement the Italian treaty. See Jones, 1931 page 86.
Restoration and the Japanese government and Parkes negotiated the Austro-Hungarian treaty (which clarified and extended aspects of the older treaties)\(^4\) but the Japanese government was soon looking to re-negotiate the Treaty’s extra-territorial aspects.\(^5\)

**The Iwakura Mission**

The Treaty provided that, upon twelve months’ notice, either Japan or Britain could demand its revision after 1 July 1872\(^6\) and one of the Iwakura Mission’s aims was to raise the subject with the Western Powers.\(^7\) Iwakura and Granville discussed the question on 27 November 1872 when the two countries’ fundamental position was set out. Iwakura stated that ‘if ... foreigners were amenable to Japanese law ... [there was] no reason why the same facilities for trade and intercourse should not be granted as existed in England...’\(^8\) whilst Granville responded that ‘as soon as Japan had a proper code of laws administered by tribunals upon which the British government could rely, a great change would take place in the feelings entertained in regard to this matter ... In all such cases, the policy of the British government was to yield the local authority jurisdiction over British subjects in precise proportion to their advancement in enlightenment and civilization.’\(^9\) In short, Japan would open up fully to trade provided extra-territoriality was abolished—which the British would only concede when a transparent and effective legal system existed in Japan.

Another aspect of the Ansei treaties which Japan considered a restriction on its sovereignty was their tariff regime: Japan was subject to the tariff regime provided in those treaties and was not free to set its own tariffs. Although not linked intrinsically to extra-territoriality, tariffs and extra-territoriality quickly became linked for negotiating purposes. John Harrington Gubbins, the Japanophile Japanese Secretary at the Legation, made clear this linkage in 1887 in a Memorandum on the history of recent treaty revision negotiations:\(^10\) the foreign Powers would only grant tariff

\(^4\) See page 9.  
\(^6\) Article XXII.  
\(^7\) For a discussion of the Iwakura Mission, see Nish, 1998.  
\(^8\) Memorandum prepared by W.G. Aston, who acted as interpreter at the meeting; FO881/2138.  
\(^9\) Ibid.  
\(^10\) Gubbins was also the English Secretary to the 1882 Revision Conference. Memorandum prepared 30 February 1887; FO881/5773 (Gubbins Memorandum).