

Johannes Berchtold. *Recht und Gerechtigkeit in der Konsulargerichtsbarkeit: Britische Exterritorialität im Osmanischen Reich 1825–1914.* München: Oldenbourg Wissenschaftsverlag, 2009. 317 S. ISBN 978-3-486-58946-7.



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J. Berchtold: Recht und Gerechtigkeit

Based on the author's 2006 Zurich doctoral thesis, this book is a meticulously researched and well-written historical monograph. One may cautiously translate its title as Law and justice in consular jurisdiction: British extraterritoriality in the Ottoman Empire 1825–1914. The caution is grounded on the fact that the term extraterritoriality is not self-explanatory. Not only does it, at least in English, exist in different ways of writing; it also has various meanings bound to the context, time and place in which it has been used.

Some authors distinguish between extraterritoriality and the younger term extraterritoriality. E.g. Luke T. Lee / John Quigley, *Consular Law and Practice*, 3rd ed., Oxford 2008, p. 7. While the latter referred to the privileges and immunities international law bestowed upon diplomatic envoys, the former related to a jurisdiction in accordance with the nationality of the legal parties rather than the territory where had taken place what was at stake in a legal case. However, not all English references make this distinction and no such distinction is made in French and in German, where, as Berchtold points out (pp. 37–39), the respective terms are *extraterritorialität*

and *Exterritorialität* only.

Whether used synonymously or not, it is clear that the terms in question are nowadays used to describe something different than in the past. What in today's globalising world refers to a state's attempt, mostly in the fields of the economy, business and finance, to have its laws applied not only within but also beyond its territory, Malcolm N. Shaw, *International Law*, 5th ed., Cambridge 2003, pp. 611–612. has earlier been a concept confined to the realm of diplomacy and international relations. According to this concept which can be traced back to Grotius, people representing their state in a foreign country and therefore temporarily being residents there should enjoy certain diplomatic privileges and immunities such as being exempt from the local jurisdiction. But when this idea which was meant to be a legal fiction came to be considered a legal rule this was widely understood as going too far. As a consequence, extraterritoriality today is no longer understood as a term implying that a diplomat was legally not present in the receiving state and that the premises of an embassy were foreign territory. The 1961 Vienna Convention on Diplomatic Relations does

not even mention the term.

What was not the intention of Grotius's legal fiction was that also ordinary people being resident in a foreign country enjoyed the privileges and immunities subsumed under the term of extritoriality. But this was the theory. The practice may have turned out very different, as Berchtold demonstrates, exploring the case of nineteenth-century Ottoman Turkey, where the so-called capitulations, that system of rules and stipulations developed over centuries to regulate the rights and duties of foreigners in the Ottoman Empire, resulted in a complex regime of consular justice.

Berchtold asks whether the regime of extritoriality in Ottoman Turkey really went so far as to save the foreigners and the protests of the foreign powers from Ottoman jurisdiction. Because he primarily looks at the English or rather British community in Ottoman Turkey between 1825, when with the end of the Levant Company all British consular jurisdiction in Ottoman Turkey was put under the control of the Foreign Office, and 1923, when the Treaty of Lausanne finally did away with the capitulations and consular jurisdiction in Republican Turkey, Berchtold's work is mostly based on sources from what used to be the Public Record Office, or PRO, and what is now the British National Archives at Kew near London.

Berchtold makes no secret of the fact that his concentration on the British sources puts a natural limit to his work in as much as a general account of consular jurisdiction in nineteenth-century Ottoman Turkey called for the study of such archival collections of other former capitulatory powers as well. Throughout his book, he frequently points to questions that could not be answered as long as no such collective study was available. He also demonstrates how to read the different documentary sources his research is based on, which answer to which question they give and which answer they do not give at all. Berchtold modestly stresses that he is neither a jurist nor an Ottomanist and he fears that his book therefore may not meet the expectations of either or both of these disciplines (p. 27). True, his book is almost entirely based on PRO documents. This however does not prevent it from being a most informative, well thought out and highly analytical achievement.

The work is organised in five main chapters, which are preceded by a lengthy introduction and a technical apparatus and concluded by a short summary, an appendix, a bibliography and an index. In the introduction, Berchtold opens with a short anecdote to illustrate what

his book is all about, explains his research interests, deduces his research question(s), outlines his approach and which limitations he had to face in his research, presents his sources and gives a short state of the art by going into the literature which he could rely or not rely on in his work. Last but not least he gives a short account of the term extritoriality and how it developed over time.

In chapter one, Berchtold goes into the historical, legal and socio-economic foundations of extritorial jurisdiction in the Ottoman Empire. Starting with a historical excursion into the legal privileges in the Levant up to the twentieth century he makes clear that our understanding of legal extritoriality in the Ottoman Empire is bound to the understanding of the capitulations.

In chapter two, Berchtold provides an institutional account of the British consular courts, their procedures and relations to other legal courts. In this context, he refers to the provincial consular courts and their place and duties within the British Levant Service. He particularly refers to the Smyrna Provincial Consular Court and then discusses the Supreme Consular Court and the Judicial Committee of the Privy Council, both constituting the higher instances of British consular jurisdiction in the Ottoman Empire at the time.

In chapter three, Berchtold examines the jurisdiction and the execution of justice in and by the consular courts of Smyrna and Constantinople. He asks whether the mere existence of a system of legal privileges which the system of consular justice did represent automatically meant that the courts always decided in favour of their citizens or protests. Berchtold first examines cases of substantive law, then those of procedural law and finally looks into the question of the execution of court sentences. As could be expected from the way he posed his question, Berchtold proves that things were not as clear-cut or black and white as one may have expected from an outside perspective. But he also shows that the British community respected the courts and accepted their decisions even if these were to their disadvantage.

The complex relationship between the British consular courts and the British Levant communities is at the centre of chapter four. Like in other parts of the world, says Berchtold, in the Levant, too, so-called tensions of empire did exist. This is to say that the communities in the periphery of the empire had developed into independent entities rather than mere satellites of the metropolis. In how far this tense relationship showed in the court is what Berchtold traces in his records.

In chapter five, Berchtold explores where the limits of extritoriality and extritorial jurisdiction were. He refers to the mixed civil and mixed commercial courts, the latter being called *tidjaret*, which he found to have been Ottoman legal institutions not only competing but also interfering with the legal capacity of the consular courts. This is particularly interesting if compared with the legal history of nineteenth-century Egypt, for which legal historians tend to subsume these kinds of courts under the capitulations, thus treating them as just another

kind of extritoriality.

This is an excellently written, thoroughly researched and therefore truly enlightening work which ideally demonstrates what can be found in western national archives such as the one in Kew and what can be done with it. An important contribution to the historiography of extritoriality and extritorial jurisdiction, the book will no doubt find the interest of readers across disciplinary boundaries.

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