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ORIGINAL ARTICLE

Not Only Territorial Waters But Also Free Sea: Contested Coastal Jurisdiction in the Ravenna–Chishima Case (1892–1895)

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Abstract

The 1892 collision between the British merchant ship *Ravenna* and the Japanese torpedo boat *Chishima* generated a three-year legal debate over jurisdiction in territorial waters. Challenging the conventional notion that the coastal State enjoyed full sovereignty over its maritime territory, this article argues that contested jurisdiction in territorial waters was ubiquitous at the turn of the twentieth century. In addition to imperialism, which played a pivotal role in transforming the coastal waters of semi-colonial countries into overlapping legal zones, political speculations and the absence of a uniform legal standard also put the coastal State's assertion of maritime sovereignty into question. On the one hand, semi-colonial states, such as the Meiji government, sometimes strategically avoided asserting maritime sovereignty when they deemed it appropriate for national interests. On the other hand, there was also a wide cleavage of opinions among Western powers regarding coastal jurisdiction. Scrutinizing the entangled currents of imperialism, political speculations and maritime laws in the Chishima case, this article contributes to the burgeoning scholarship on the polycentric oceanic world by displaying the rarely discussed contested jurisdiction in territorial waters before World War II.

At 4:58 a.m. on November 30, 1892, the Japanese torpedo boat *Chishima* collided with the British Peninsular and Oriental Steam Navigation Company (hereafter, P&O)'s merchant ship *Ravenna* in the dense fog in the Seto Inland Sea (Figure 1), the largest body of Japanese inland waters. Running at full speed, the *Ravenna* struck the *Chishima* right amidship and cut her into two halves. The Japanese vessel sank almost immediately, with seventy-four crew members drowned at sea. The *Ravenna*, despite no casualties, suffered considerable

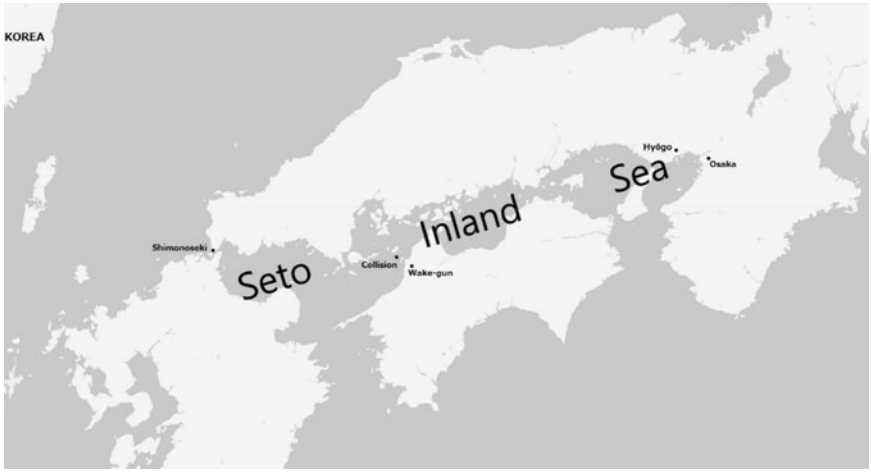

Figure 1. The Seto Inland Sea and the location of the collision, map by the author.

damage from the steel protective deck of the *Chishima*.[1] Demanding compensation from the P&O, the Japanese government filed a lawsuit in the British Consular Court at Yokohama (hereafter, the Yokohama court), which was entitled to hear all cases against British subjects in Japan according to the 1858 Anglo-Japanese Treaty of Amity and Commerce. However, the lawsuit generated a three-year legal debate, in which the Seto Inland Sea became part of both Japanese territorial waters and the high seas in Western eyes.

A considerable body of works has scrutinized the Chishima case by analyzing the public reactions in Japan, the British extraterritorial jurisdiction, and the Meiji government's expression of national sovereignty.[2] This article builds on these studies but reframes them by taking a maritime perspective––that is, to situate the Chishima incident within the history of international maritime

[1] "The Collision in the Inland Sea," *The North-China Herald and Supreme Court & Consular Gazette*, December 16, 1892, 917.

[2] For example, see Richard T. Chang, "The Chishima Case," *The Journal of Asian Studies* 34, no. 3 (1975): 593–612; Unemura Shigeru, "Chishimakan jiken–kokusaihōjō no kanten kara (1)," *Kōnan hōgaku* 15, nos. 1&2 (1975): 15–25; Murakami Mitsugu, "Chishimakan shōtotsu jiken to mizusakinin Kitano Yoshibei," *Kaijishi kenkyū* 42 (1985): 13–36; Matsuo Tadahiro, *Chishimakan chinbotsu* (Matsuyama: Iyo minzoku no kai, 1988); Geoffrey Marston, "British Extra-territorial Jurisdiction in Japan: The Case of the *Ravenna* and the *Chishima*," *British Yearbook of International Law* 68, no. 1 (1997): 219–45; Sawa Mamoru, "Chishimakan shōtotsu chinbotsu jiken (1)," *Keiai daigaku keizaigaku-kai henshū i'inkai hen* 65 (2003): 139–55; Douglas Howland, "International Law, State Will, and the Standard of Civilization in Japan's Assertion of Sovereign Equality," in *Law and Disciplinarity*, ed. Robert J. Beck (New York: Palgrave Macmillan, 2013), 183–205; Christopher Roberts, *The British Courts and Extra-Territoriality in Japan, 1859–1899* (Leiden: Global Oriental, 2014), 283–313; Catherine L. Phipps, *Empires on the Waterfront: Japan's Ports and Power, 1858–1899* (Cambridge, MA: Harvard University Asia Center, 2015), 179–85; Nakagawa Mirai, "'Chishimakan jiken saikō–1890 nendai ni okeru taigaikō gensetsu no ryūtsū to chiikishakai," *Ehime daigaku hōbungakubu ronshū • jinbungaku hen* 51 (2021): 1–22.

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law. Over recent decades, many historians have demonstrated that the sea is neither an empty void nor a homogenous entity that can be "rationalized" by a single juridical–political order; instead, it is a highly contested space influenced by race, law, class, gender, and nature.[3] In the words of Lauren Benton, the oceanic world has long been characterized by "variegated" and overlapping spheres of influence.[4] However, despite burgeoning literature in maritime studies, historians have devoted much less study to territorial waters than to the free sea, especially concerning the period before World War II. Since many scholars perceive the immediate postwar period as the inception of "fully developed" international maritime law, the preceding century is usually schematized as an era when the issue of territorial waters "flared up intermittently," coupled with a series of unsuccessful attempts to develop a uniform rule on the expression of maritime sovereignty.[5] Among the very few works on the evolving legal system of maritime territory before 1945, scholars tend to focus on delimitation rather than governance practices, often with an implicit presumption that the coastal State enjoyed full sovereignty in its territorial waters.[6]

Through the lens of the Chishima case, this article contends that despite being nominally subject to a single coastal State's exclusive jurisdiction, territorial waters still constitute part of what Benton calls a "variegated" oceanic world at the turn of the twentieth century. In this era of high imperialism, Euro-American powers portrayed territorial waters of semi-colonial countries as part of the high seas by leveraging their extraterritorial privileges. However, imperialism, while important, was only one of the reasons for overlapping jurisdiction in territorial waters. Political considerations and the ambiguity of international maritime laws also played key roles in hindering the coastal State from exercising exclusive jurisdiction over its territorial seas.

[3] See for example, Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2010); Brian Rouleau, *With Sails Whitening Every Sea: Mariners and the Making of an America Maritime Empire* (Ithaca: Cornell University Press, 2014); Renisa Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (Durham: Duke University Press, 2018); Jason Smith, *To Master the Boundless Sea: The U.S. Navy, the Maritime Environment, and the Cartography of Empire* (Chapel Hill: University of North Carolina Press, 2018).

[4] Benton, *A Search for Sovereignty*, 37–38.

[5] For example, see David Armitage, "Introduction," in Hugo Grotius, *The Free Sea*, trans. Richard Hakluyt, ed. David Armitage (Indianapolis: Liberty Fund, 2004), xx; Douglas M. Johnston, *The Theory and History of Ocean Boundary-Making* (Kingston and Montreal: McGill-Queen's University Press, 1988), 45–46; Yoshifumi Tanaka, *The International Law of the Sea*, 3rd ed. (Cambridge: Cambridge University Press, 2019), 26–28.

[6] See for example, Heinz. S. K. Kent, "The Historical Origins of the Three-Mile Limit," *The American Journal of International Law* 48, no. 4 (1954): 537–53; Sayre Archie Swarztrauber, "The Three-mile Limit of Territorial Seas: A Brief History" (PhD diss., American University, Washington, 1970); Sang-Myon Rhee, "Sea Boundary Delimitation Between States Before World War II," *The American Journal of International Law* 76 (1982): 555–88. Some works have explored the governance of coastal waters before World War II, but their focus does not lie on international maritime law. See for example, Francesca Trivellato, "'Amphibious Power': The Law of Wreck, Maritime Customs, and Sovereignty in Richelieu's France," *Law and History Review* 33, no. 4 (2015): 915–44.

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On the one hand, semi-colonial states, such as the Meiji government, sometimes averted the expression of maritime sovereignty when they deemed it appropriate for national interests. On the other hand, there was also a wide cleavage of opinions among Western powers regarding jurisdiction over territorial waters. Scrutinizing the entangled currents of imperialism, political speculations and maritime laws, this article contributes to the burgeoning scholarship on the polycentric oceanic world by displaying the rarely discussed contested jurisdiction in territorial waters at the turn of the twentieth century. In line with recent works on the history of international law, I perceive "maritime sovereignty" as a concept characterized by two interrelated elements: on the one hand, it refers to the expression of a state's supreme and exclusive power within a given littoral space; on the other, justified in legal terms, modern states also go beyond their maritime boundaries to exert control over foreign and public resources.[7] The two contradictory forces undergird the long-standing discourses about territorial waters in Asia and the rest of the world.

Focusing on the debates over the legal status of the Seto Inland Sea, this article analyzes in chronological order how the British Yokohama court, the British Supreme Court for China and Japan at Shanghai (hereafter, the Shanghai supreme court), and the British Privy Council at London heard the Chishima case, while also introducing similar cases in Meiji Japan and other regions that displayed contested coastal jurisdiction. It begins with a brief overview of the collision and the Yokohama court's verdict that recognized the Seto Inland Sea as Japanese territorial waters, which witnessed one of the earliest attempts made by the Meiji government to guard its maritime sovereignty against Western encroachment. The article then examines how the Shanghai supreme court, the superior of the Yokohama court, overturned the previous verdict by defining the Inland Sea as "a highway of nations" against the backdrop of vigorous international debates on maritime jurisdiction. The last section examines why the Privy Council, the court of last resort for all British consular courts, circumvented the question of maritime jurisdiction and initiated an out-of-court settlement that had no mention of the Inland Sea. Taken as a whole, this article shows that at the turn of the twentieth century, territorial waters, despite being an extension of a nation's territory on the seas, still fit into Matthew Taylor Raffety's description of the oceanic world: "the questions were largely about whose law to use."[8]

The Collision and the First Instance at Yokohama

Following the shipwreck, the Japanese and British authorities soon started their own investigations to locate the cause of the collision and, unsurprisingly,

[7] Martti Koskenniemi, "Vocabularies of Sovereignty–Powers of a Paradox," in *Sovereignty in Fragments: The Past, Present and Future of Contested Concept*, eds. Hent Kalmo and Quentin Skinner (Cambridge: Cambridge University Press, 2010), 237.

[8] Matthew Taylor Raffety, "'The Law Is the Lord of the Sea': Maritime Law as Global Maritime History," in *A World at Sea*, eds. Lauren Benton and Nathan Perl-Rosenthal (Penn: University of Pennsylvania Press, 2020), 53.

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reached opposite conclusions. The Meiji government's Yokohama District Court deemed the *Ravenna*'s Japanese pilot Kitano Yoshibei responsible for the incident. When he saw the light signal flashed by the *Chishima*, Kitano anticipated that the torpedo boat would change its course and therefore made no adjustment for the path of the *Ravenna*, which, according to the Yokohama District Court, "ruined the chance of handling the emergent circumstances."[9] On the other hand, the British Marine Court of Inquiry at Yokohama judged that the *Ravenna*'s action was not "the primary cause of the collision" because it had "adopted the correct course according to the rules of the road." However, it also noted that the damage to the *Chishima* could have been mitigated if the *Ravenna* stopped her engine sooner.[10] As such, both sides blamed the other vessel for causing the collision with support from their own courts.

In May 1893, the Japanese Prime Minister Itō Hirobumi's cabinet sued the P&O for compensation totaling eight hundred and fifty thousand yen in the British Yokohama court. However, this three-year lawsuit never had a chance to explore the cause of the collision; instead, the two sides disputed the legal procedure throughout the whole case. The P&O first presented a demurrer, questioning whether an "unknown and undefined body such as the 'Imperial Japanese government'" could sue in the British Yokohama court as a plaintiff. The Itō cabinet then represented the Meiji emperor as the owner of the *Chishima* who was suing in the name of the Imperial Government of Japan.[11] The P&O responded by filing a counterclaim that attributed the collision to the actions of the *Chishima*, demanding ten thousand yen for the recovery of the *Ravenna*, and requiring the plaintiff–the Meiji emperor–to "abide by and perform the decision of the British court."[12]

The Meiji government could never accept that its emperor appeared as a defendant in the British court. To follow Takashi Fujitani, the late nineteenth century was a transitional moment in Japan from a period when popular images of the Emperor tended to be nonpolitical and rooted in folk religions to an era that perceived him as the emblem of national dignity.[13] Seeking to prevent Japan's symbol from being subject to foreign jurisdiction, the Meiji government requested the Yokohama court to dismiss the P&O's counterclaim because of its non-compliance with the legal procedure. It argued that (1)

[9] *Chishimakan eisen "Ravenna" gō to shōtotsu chinbotsu ikken tsuki songai yōshō ni kakaru soshō ni kansuru ken, volume 1*, Japan Center for Asian Historical Records (hereafter, JACAR), Ref. B07090393800, 1892–1893, figs 22–23.

[10] "Marine Court of Inquiry at Yokohama: The 'Chishima Kan'—'Ravenna'," *The North-China Herald and Supreme Court & Consular Gazette*, January 6, 1893, 20.

[11] "The Ravenna-Chishima Case," *The North-China Herald and Supreme Court & Consular Gazette*, June 2, 1893, 795. All currency amounts have been converted to Japanese yen in this article for clarity.

[12] Anon., "In H.B.M. Court for Japan," *The Japan Weekly Advertiser*, June 12, 1893, in *Jurisdiction of British Courts in Japan under Orders in Council and Existing Treaty Rights. Alleged Inconsistency between Orders in Council and Treaties. "Chishima"—"Ravenna" Collision: Volume 480* (hereafter, FO 480), Gale, Ref. AKACQC880289239, fig 52.

[13] Takashi Fujitani, *Splendid Monarchy: Power and Pageantry in Modern Japan* (Berkeley: University of California Press, 1996), 9.

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although the 1865 British Order in Council allowed the defendant to file a counterclaim in the same suit, it did not apply to foreign plaintiffs (2) even if the Order could be applied to foreign plaintiffs other than Japanese, it did not work for Japanese plaintiffs because the 1858 Anglo-Japanese treaty required all cases against the Japanese to be heard in the Courts of Japan (3) the Meiji emperor should be treated as the Crown in this court and the King could do no wrong according to the doctrine of sovereign immunity, and (4) even if the Emperor was not to be treated as the Crown in the Yokohama court, the collision occurred in Japanese waters and the law to be applied was the law of Japan in which the Emperor enjoyed legal immunity.[14] In this way, the focus of the lawsuit moved from the cause of the collision to the validity of the P&O's counterclaim.

The Yokohama court refuted the first three arguments following a discussion on the 1865 Order and the 1858 Treaty, making the place of the collision the only decisive factor for the question of legal procedure. In the 1890s, the British courts followed the double actionability principle––that is, the civil liability arising out of a wrong derived its birth from the law of the place and its character was determined by that law.[15] In other words, the first task of the Yokohama court was to investigate whether the collision occurred in Japanese territorial waters or on the high seas. The two places fell within two legal frameworks that could generate opposing results. One was the law of Japan, in which the Emperor enjoyed legal immunity and bore no responsibility for the negligence of his subjects. As the *Chishima* sank at longitude 132°40′ East and latitude 33° 56′ North, the incident happened within three nautical miles from the Japanese coast.[16] Despite remarkable divergences on the practices of maritime sovereignty, most governments in the 1890s agreed that the minimal breadth of the territorial sea should be no less than three nautical miles. The Meiji government also referred to the 1878 M. Moxham case, in which a British ship caused serious damage to a pier in the port of Marbella.[17] The judge in that case considered the pier as part of the Spanish territory and thereby applied the law of Spain. Given the widely accepted three-mile principle and the M. Moxham case, the Meiji government believed that the Yokohama court would perceive the collision as occurring in Japanese waters, apply the law of Japan, and recognize the legal immunity of the Emperor.

[14] Anon., "H.B.M. Court for Japan, Kanagawa," *The Japan Weekly Advertiser*, June 20, 1893, *FO 480*, fig 56.

[15] This principle was established after the 1870 Phillips v. Eyre case. In this lawsuit brought by several Jamaicans against Edward John Eyre, the British governor of Jamaica who violently suppressed a local revolt, the Courts of England held that Eyre's conduct in Jamaica was justifiable in the law of Jamaica and therefore the governor could not be persecuted for murder in England. For more details of the Phillips v. Eyre case, see for example, Peter Handford, "Edward John Eyre and the Conflict of Laws," *Melbourne University Law Review* 32, no. 3 (2008): 822–60.

[16] Anon., "H.B.M. Court for Japan, Kanagawa," *The Japan Weekly Advertiser*, June 20, 1893, *FO 480*, fig 56.

[17] Thomas Wemyss Fulton, *The Sovereignty of the Sea: An Historical Account of the Claims of England to theDominion of the British Seas, and of the Evolution of theTerritorial Waters* (Edinburgh and London: William Blackwood and Sons, 1911), 21–22.

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The other legal framework was the British admiralty law that deemed the owners of the ship responsible for the negligent navigation conducted by their crew–in other words, under this legal system the Emperor would be obliged to compensate the P&O if the actions of the *Chishima* caused the collision. Established in the medieval period as "an instrument of the office of Lord High Admiral," the Admiralty law enjoyed an extensive expansion of jurisdiction during the nineteenth century in tandem with the rise of British hegemony on the oceans.[18] At the time of the Chishima incident, the Admiralty law comprehended all collisions on the high seas.[19] The lawyer of the P&O tried to portray the Inland Sea as part of the high seas, contending that the term "high seas" referred to "any enclosed piece of water beyond low water mark." The judge at the Yokohama court was suspicious of this contention, but he indicated that according to the three-mile principle, the collision would be perceived as taking place on the high seas if one of the entries of the Inland Sea was "more than six miles wide."[20]

It was in this context that the legal status of the Seto Inland Sea became the focal point. Since both the Meiji government and the P&O rested their claims on the geographical characteristics of the Inland Sea, the Yokohama court conducted a close examination of maps and concluded on June 29, 1893, that the widest entry was "about four miles wide." It thereby ruled that the Inland Sea was "landlocked" and the collision "occurred within the territorial waters of Japan." Drawing from the double actionability principle and previous cases, the Yokohama court decided to apply the law of Japan and rejected the P&O's counterclaim on the basis that the Emperor enjoyed sovereign immunity in the Japanese legal system.[21]

While Meiji Japan witnessed many maritime disputes in its coastal waters, the Chishima incident marked one of the earliest attempts made by the Japanese government to defend its maritime sovereignty against Western encroachment.[22] Prior to the 1890s, the Meiji government encountered two major jurisdictional battles with foreign powers in its coastal waters. One was the 1872 Maria Luz incident sparked by the escape of Chinese indentured laborers from the Peruvian ship *Maria Luz* to a nearby British vessel in the Yokohama port. The other was the 1886 Normanton case, in which the Meiji government sued the British captain of the shipwrecked *Normanton* for ignoring his drowning Japanese passengers. Both cases generated a series of legal conundrums, but neither centered on the issue of maritime sovereignty. The *Maria Luz* was taking shelter from a storm in Yokohama when its Chinese passengers fled, leaving little doubt that the incident took place in Japanese

[18] Frank. L. Wiswall Jr., *The Development of Admiralty Jurisdiction and Practice Since 1800: An English Study with American Comparisons* (Cambridge: Cambridge University Press, 1970), 4–10.

[19] Anon., "In H.B.M. Court for Japan," *The Japan Weekly Advertiser*, June 12, 1893, *FO 480*, fig 54.

[20] Ibid., fig 55.

[21] Anon., "H.B.M. Court for Japan, Kanagawa," *FO 480*, figs 56–57.

[22] In claiming the Chishima case was the earliest, the author has mainly referred to Richard Chang, *The Justice of the Western Consular Courts in Nineteenth-Century Japan* (Connecticut: Greenwood Press, 1984) and Japan Marine Accident Tribunal, *Nihon no jūdai kainan*, https://www.mlit.go.jp/jmat/monoshiri/judai/judai.htm#sei (accessed May 6, 2024).

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territorial waters.[23] The *Normanton* ran aground on an offshore reef at the southern tip of the Kii peninsula, which made it highly possible that the shipwreck location was in Japan's territorial sea. However, the focal point of the Normanton trial was whether the British captain tried his best to rescue the Japanese passengers. The entire court hearing made no mention of the territorial waters issue.

Despite their limited relevance to maritime sovereignty, what is especially noteworthy about the two cases for our present inquiry is the Meiji government's reticence to assert, as well as its consideration to renounce, exclusive jurisdiction over its territorial waters. In the Maria Luz case, the Minister of Justice Etō Shinpei argued against trying the Peruvian captain in a Japanese court, since his ship was considered floating territory of Peru and his controversial act of transporting indentured laborers occurred on the high seas. To be sure, Etō's position hardly derived from his "ignorance" about the concept of maritime sovereignty. As Giorgio Fabio Colombo points out, the primary intention of Etō was to help the fledging Meiji government dodge a complicated case that involved diplomatic relations with multiple countries and the controversial indentured servant trade. Moreover, Western powers were also at variance on this matter. The German, Portuguese, Danish, and Italian governments all opposed Japanese jurisdiction over the *Maria Luz*. Carl Eduard Zappe, the German Consul General to Yokohama, stressed that the Japanese authorities were "not competent" to punish crimes committed on the high seas or validate contracts made among foreigners outside Japan. As for the Peruvian ship being in the Yokohama port at the time of the incident, Zappe contended that the legal status of the *Maria Luz* was questionable because it was "forced" to enter Japanese territory due to weather conditions.[24] Nevertheless, the Meiji government finally adopted the views of the British consul and Foreign Minister Soejima Taneomi, who suggested that the case be heard in a Japanese court because the *Maria Luz* was anchored within Japan's territorial waters.[25]

As Colombo notes, it was not so much their different understanding of maritime laws that generated the divergence of Western powers over the Maria Luz case but rather their conflicting political interests in Japan. For example, the German consul's position stemmed from his concerns about setting a precedent for the Japanese authorities to exercise exclusive jurisdiction over a case involving foreigners, as well as his "jealousy" of the English-speaking consultants upon whom the Meiji government depended the most.[26] On the other hand, the British consul suggested the Meiji government claim jurisdiction over the case because of its empire's war on the indentured servant trade during the late nineteenth century.[27] Seen in this light, much like the responses of the German and British consuls, Etō Shinpei's proposal to renounce Japanese

[23] Giorgio Fabio Colombo, *Justice and International Law in Meiji Japan: The Maria Luz Incident and the Dawn of Modernity* (Abingdon: Routledge, 2023), 43.

[24] Ibid., 35–36.

[25] Dougals Howland, *International Law and Japanese Sovereignty: The Emerging Global Order in the Nineteenth Century* (Hampshire: Palgrave Macmillan, 2016), 35.

[26] Colombo, *Justice and International Law in Meiji Japan*, 37.

[27] Ibid., 37.

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jurisdiction over the Peruvian ship was to appropriate the language of maritime law to his country's political advantage.

Similarly, in the 1886 Normanton case, while the ship sank off the Japan coast, neither the British court nor the Meiji government paid heed to the question of whether the shipwreck occurred in Japanese territorial waters. In its indictment to the British Yokohama court that accused the *Normanton*'s captain of manslaughter by negligence, the Meiji government simply described the incident as taking place "within the jurisdiction of your court."[28] Also, no one questioned the judge's application of British laws in the hearing process, which was starkly different from the Chishima case seven years later. While the absence of the territorial waters issue in the Normanton case garnered little attention from the contemporaries and historians, the lenience of Japanese legal punishment for manslaughter by negligence probably played a role. As Richard T. Chang has mentioned, under the Japanese law in the 1890s, the punishment for manslaughter by negligence was to impose a fine ranging between 20 and 200 yen. The severest British legal punishment for involuntary manslaughter, however, was penal servitude for life.[29] Therefore, it seems safe to assume that the Meiji government's silence on the territorial waters issue rested upon its hope that the British captain would receive severe punishment for the death of the twenty-five Japanese passengers.

Since the focus of the Maria Luz and Normanton cases lay elsewhere, the Chishima incident, the third major maritime disputes involving foreign powers in Meiji Japan, witnessed the Meiji government's early attempt to assert sovereignty over its territorial waters against Western encroachment. Far from simply a defense of "inviolable national sovereignty," a term frequently seen in today's news reports on maritime disputes, the Meiji government's approaches to its territorial waters worked in conversation with its evolving political interests. In fact, the Meiji regime was by no means the only government that adopted such a pragmatic stance. Major Western powers, as we shall see later, viewed their territorial waters in much the same manner at the turn of the twentieth century.

The Second Instance at the Shanghai Supreme Court

In October 1893, nearly four months after the first instance, the P&O submitted an appeal for review to the Shanghai supreme court. Much like the court hearing at Yokohama, the second instance also revolved around the legal status of the Seto Inland Sea and the system of extraterritorial treaties. Drawing lessons from the previous failure, the P&O shifted its strategy by arguing that the Seto Inland Sea was part of the high seas not in terms of its geographic location but in terms of jurisdiction. As it reminded the Shanghai supreme court, the Meiji government neither extended its municipal law to "the three-mile limit" on the seas nor enjoyed exclusive jurisdiction over Japanese territory under the extraterritorial treaties. Depicting the Inland Sea as "a highway of nations"

[28] Kikuchi Hiroshi, "Norumanton gō senchō no saiban," *Hōsō* 234 (1970): 42.

[29] Chang, *The Justice of the Western Consular Courts*, 92 and 96.

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that saw joint jurisdiction, the P&O claimed that the Shanghai supreme court should apply the Admiralty law to the Chishima case.[30] Its new strategy worked. On October 25, 1893, the Shanghai supreme court issued its verdict that soon infuriated the Japanese public, which ruled that (1) the collision took place on the high seas, and (2) the Meiji emperor, as the defendant in the P&O's counterclaim, should abide by and perform the decision of the British court.

For our present purposes, the most important were the reasons why the Shanghai supreme court favored the P&O's claim that the Inland Sea was a public highway of nations rather than part of Japanese territorial waters. Three factors contributed to its decision: British imperial interests, extraterritorial treaties, and the absence of a uniform code on jurisdiction over territorial waters. First, in the words of Richard T. Chang, the verdict was apparently "a reflection of nineteenth-century imperialism" as seen from today.[31] The Itō cabinet's French consultant Michel Revon noted that the Shanghai supreme court's decision followed the British government's tradition of pragmaticism. Although the British Empire held to the "closed sea policy" during the seventeenth century, it turned to promote the idea of the free sea when achieving maritime hegemony in the following decades, thereby justifying its expansion into foreign coastal waters.[32] The verdict also exemplified what John Gallagher and Ronald Robinson classically describe as "the most common political technique of British expansion"––that is, the treaty of free trade and friendship imposed upon a weaker state.[33] Taking up the mantle of navigational freedom, which constituted an essential part of the Anglo-Japanese "free trade and friendship," the Shanghai supreme court invoked legal vocabulary to preclude the Meiji government from exercising sovereign power in its territorial waters and thereby extended the reach of the British admiralty law in the East Asian seas.

The verdict also helped display the "superiority" of the British legal system against the backdrop of growing Japanese dissent over Western extraterritorial jurisdiction in the late nineteenth century. The *North-China Herald and Supreme Court & Consular Gazette*, a major mouthpiece of the British community in East Asia, showed great contempt for the "Japanese students" who dared to challenge their "English teachers." Before the first instance at Yokohama, the newspaper depicted the Japanese crew on the *Chishima* as "children" in terms of "the management of foreign-type ships of war" and asked the Meiji government to "bow to the decision" made by the "impartial" British Marine Court of Inquiry that distanced the *Ravenna* from the primary cause of the collision.[34]

[30] "On Appeal from H.B.M.'s Court for Japan, at Kanagawa," *Supreme Court & Consular Gazette*, October 11, 1893, *FO 480*, figs 111 and 113.

[31] Chang, "The Chishima Case," 602.

[32] Michel Revon, "Chishimakan jiken ni kansuru 'Ruvaon' shi no iken," March 7, 1894, in *Hishoruisan dainijūroku kan*, ed. Itō Hirobumi, National Diet Library of Japan, Ref. 310.8-I783h, 1936, fig 288.

[33] John Gallagher and Ronald Robinson, "The Imperialism of Free Trade," *The Economic History Review* 6, no. 1 (1953): 11.

[34] "Front Page 1–No Title," *The North-China Herald and Supreme Court & Consular Gazette*, January 13, 1893, 29.

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Later, it celebrated the Shanghai supreme court's verdict, claiming that it fell in line with "the ordinary common-sense view" on the question of counterclaims that a man "who sought equity must do equity."[35] These comments echo what James Hevia calls "English lessons"––that is, imperialism as pedagogical processes in which "civilized" Westerners attempted to teach "less civilized populations" about "proper behaviors" and transformed them into willing cooperators in a Eurocentric world. When the "Japanese students" rebelled against their "English teachers" with their "immature" understanding of navigation and maritime laws, therefore, the *North China Herald* felt obliged to reassert British superiority through acts of humiliation. In this context, the Shanghai supreme court, the highest British legal authority in East Asia, met the *North China Herald*'s call for an "English lesson" by rejecting the Meiji government's claim through its skillful use of British and international laws.

Second, the extraterritorial treaties, especially the provisions regarding the Western rights of free navigation, precluded the Meiji government from exercising exclusive jurisdiction over the Seto Inland Sea. The Shanghai supreme court emphasized the peace treaty in the Shimonoseki campaign (1863–1864) signed by the Tokugawa shogunate (1603–1868), the predecessor of the Meiji government. Since the 1853 arrival of the Commodore Perry, the Japanese authorities had been forced to depart from their isolationist stance and established trade relationships with Euro-American powers. In 1863, the decade-long xenophobic sentiment over the shogunate's open-door policy drove the Chōshū domain to fire upon all foreign ships passing through the strait of Shimonoseki, the narrowest entry to the Seto Inland Sea. The British, French, Dutch, and American governments responded by sending a joint fleet to "help" the shogunate suppress the "rebellion," bombarding Shimonoseki and forcing the Chōshū leader to surrender in September 1864. As the military operation ended with the reopening of the strait to Western ships, the Shanghai supreme court ruled that the Shimonoseki campaign transformed the Inland Sea into "clearly a highway of nations" on which "all foreigners claimed the right of free navigation." It asserted that the Japanese government recognized this claim and those who resisted it, such as the Chōshū domain, "were compelled by force of arms to abandon their resistance."[36]

The last reason, perhaps the most important one, resulted from the wide cleavage of scholarly opinions on maritime jurisdiction in territorial waters in the late nineteenth century. Even until today, the content of international maritime law saw irreconcilable tension between the ideas of navigational freedom and territorial sovereignty of the coastal State. For example, under the 1982 Law of the Sea Convention, the coastal State's sovereignty over its maritime territory is "restricted by the right of innocent passage for foreign vessels"––that is, a government cannot prohibit the entry of foreign vessels into its territorial waters unless their passages are considered prejudicial to the nation's "peace, good order or security." The 1982 convention also included

[35] "The Chishima-Ravenna Appeal," *The North-China Herald and Supreme Court & Consular Gazette*, October 27, 1893, 654.

[36] "On Appeal from H.B.M.'s Court for Japan, at Kanagawa," *FO 480*, fig 113.

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ambiguous regulations regarding the coastal State's exercise of civil jurisdiction on the territorial sea. Although it acknowledges the legislative rights possessed by the coastal State over foreign ships passing through its territorial waters, the convention cautions against "stopping or diverting" these vessels for the purpose of "exercising civil jurisdiction concerning a person on board."[37] These ambiguous laws implicate that the expression of sovereign power by the coastal State over foreign ships in its territorial waters remained an object of debate in the making of the 1982 convention, and the answer was largely left to the judgment of political authorities.

The Shanghai supreme court faced the same question in addressing the Chishima case, but it was unable to find any international convention as legal reference. Many judges in the nineteenth century, including those of the Shanghai supreme court, hardly perceived the concepts of the high seas and territorial waters as mutually exclusive. The legal citation that the Shanghai supreme court considered the most appropriate was the 1878 case of Franconia. This case derived from a collision between a German ship and a British steamer that took place within two miles of Dover, an English port facing the European mainland. Concerning the jurisdiction over the German ship *Franconia*, the British Admiralty court and the Privy Council ruled that they would apply "the law of nations" to the case because the Strait of Dover was not only British "territorial waters" but also "the high seas" in terms of its important role in global maritime traffic. The Shanghai supreme court also referred to the 1860 Saxonia case, in which the admiralty law was applied to the collision between a German steamer and a British ship at the Strait of Solent within half a mile from the English coast. The Chief Judge N. J. Hannen regarded the spot of the collision in the Saxonia case as "nearly analogous" to that in the Chishima incident. He claimed that both were simultaneously part of territorial waters and high seas, at which "the Local Law did not apply" in the absence of specific legislation (Figure 2).[38]

The Meiji government had no maritime law in force in the 1890s. Although it had completed a draft of Japanese Maritime Law in 1878, the project was aborted for unknown reasons.[39] Regarding the three-mile principle frequently cited by both the plaintiff and defendant in the first instance, the Shanghai supreme court argued that it was only a customary maritime practice that could not be found in any written Japanese law. In addition, Inoue Kowashi and Kaneko Kentarō, two of the major contributors to the 1889 Japanese Constitution, also suggested the Itō cabinet avoid using the three-mile principle as legal reference in the Chishima case:

> "The only way to get rid of this difficult situation is as follows: to state that a law on the Japanese empire's territorial seas will be made in the

[37] Tanaka, *The International Law of the Sea*, 106 and 115.

[38] Anon., "On Appeal from H.B.M.'s Court for Japan, at Kanagawa," October 25, 1893, *Supreme Court & Consular Gazette*, *FO 480*, fig 114.

[39] Hanawa Akira, "Nihon no ryōkai nikansuru ni, san no rekishiteki kōsatsu," *Tōkyō kōgei daigaku kiyō* 1, no. 1 (1978): 7.

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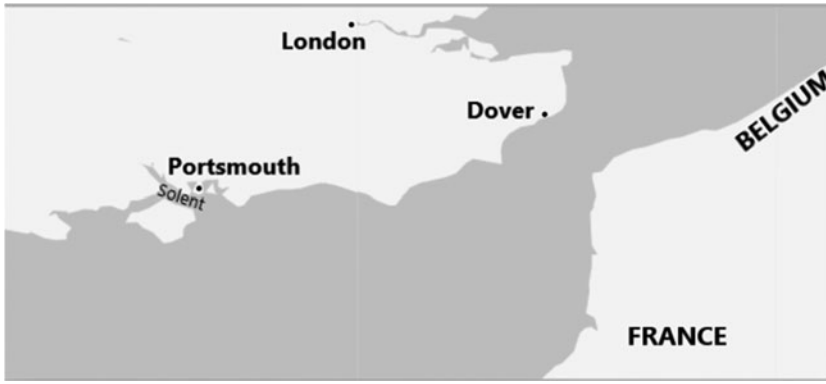

Figure 2. Dover and The Solent, map by the author.

> next session of the Diet for the purpose of eliminating confusion within and beyond Japan in the future. The judge assistant at the Shanghai supreme court said that the three-mile principle was just a theory accepted by scholars of international law and it could not be found in any express provision in the law of Japan, so this theory could not be regarded as evidence influencing the judgment……"[40]

In this joint memorial, Inoue and Kaneko acknowledged the absence of Japanese maritime law and requested the Itō cabinet to make legislation on territorial waters as soon as possible. In other words, the Shanghai supreme court was right in pointing out that the Meiji government never extended its municipal law to Japanese coastal waters, which posed challenges for the Itō cabinet to couch its maritime claim in legal terms.

The Shanghai supreme court's decision drew attention from the Institute of International Law, which showed much interest in the question of maritime jurisdiction during the late nineteenth century. Established in 1873, the Institute was composed of prominent legal scholars who, in the words of Martti Koskenniemi, sought to develop a system of international law based on "a collective (European) conscience."[41] In 1894, Sir Thomas Barclay, a member of the Institute, analyzed the Chishima case in his letter to the Meiji government through Kaneko Kentarō, his colleague at the Institute and Itō's secretary. Drawing from the discussions with his colleagues in the Institute, he first reminded the Itō cabinet that the sea could be divided into three categories: the high sea, the territorial sea, and the internal water. The difference among the three seas lay in their jurisprudence. According to Barclay, the coastal State had no right to regulate the high sea, should exercise maritime sovereignty

[40] Inoue Kowashi and Kaneko Kentarō, "Inoue Kowashi Kaneko Kentarō tō shojō ittō," November 9, 1893, *Hishoruisan*, fig 341.

[41] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870–1960* (Cambridge: Cambridge University Press, 2004), 51.

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over its territorial sea without prohibiting innocent passage for foreign vessels, and could treat the internal water the same way as landlocked lakes.[42]

Based on the categorization above, Barclay supported neither the Yokohama court's decision nor the Shanghai supreme court's verdict. Although he agreed that the Inland Sea should be regarded as Japanese internal waters in terms of its geographic characteristics, Barclay highlighted the overlapping sets of legal systems in this area that derived from (1) the 1858 Anglo-Japanese treaty that opened Hyōgo as a treaty port and secured Western rights of using the Inland Sea as a trade route (2) the Meiji government's permission in the 1860s and 1870s that authorized Western ships to chart the Inland Sea, and (3) the 1870 Declaration of Neutrality in the Franco-Prussian War that demonstrated the Meiji government's inability to block the Inland Sea due to the legal constraints imposed by the extraterritorial system. He thus concluded that the Meiji government owned no exclusive jurisdiction over the Inland Sea and therefore the Yokohama court's application of Japanese law to the Chishima case was inappropriate.[43] However, despite many shared opinions with the Shanghai supreme court, Barclay firmly disagreed with its idea that the Inland Sea was the same as the Solent Strait in terms of jurisprudence. While the two sides of the Solent Strait were governed by the British and French governments, respectively, the Seto Inland Sea, as Barclay indicated, was surrounded by Japanese territories on all sides. In his view, the Saxonia case and the Chishima incident raised different questions. The former was about whether foreign vessels owned the right of innocent passage in the British territorial sea. The latter, however, revolved around the entanglement of extraterritoriality and Japanese maritime sovereignty in the internal water of Japan.[44]

How, then, would Barclay tackle the Chishima case if he were the judge? Although the letter did not provide a definite answer, Barclay insinuated that he disagreed with the Meiji government's claim. Much like the Shanghai supreme court's interpretation of the Shimonoseki campaign, he viewed the peace treaty as proof that the Japanese authorities "gave up some part of its sovereignty and assigned others" to govern their territorial waters.[45] This led to his conclusion that the Inland Sea was of a complex nature––that is, despite being Japanese internal waters geographically, it "could be viewed as the territorial sea for some purposes," and "should be regarded as a highway of nations on which Western powers enjoyed the use rights" when their ships departed for the treaty port Hyōgo.[46] To Barclay and the Institute of International Law, therefore, the Seto Inland Sea was a site of legal pluralism due to the semi-colonial status of the Japanese nation.

While the existence of extraterritorial treaties significantly handicapped the Meiji government's expression of maritime sovereignty, it is noteworthy that

[42] Thomas Barclay, "Chūgoku naikai no Nihon ryōkai naruya inaya wo ronji awasete Chishimakan shōtotsu jiken ni kansuru Shanhai hōtei no hanketsu wo hyōsu," date and translator unknown, *Hishoruisan*, fig 281.

[43] Ibid., fig 283.

[44] Ibid., figs 283–84.

[45] Ibid., fig 285.

[46] Ibid., fig 284–85.

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coastal jurisdiction was also an open question to Euro-American empires at the turn of the twentieth century. The above-mentioned Saxonia and Franconia cases have demonstrated overlapping jurisdictional claims in the Straits of Solent and Dover. Similar cases also occurred outside the British Isles. In *Across Oceans of Law*, for example, Renisa Mawani explored the contested jurisdiction over the *Komagata Maru*, a steamship carrying 376 Punjabi passengers from Hong Kong to British Columbia under the Japanese flag in 1914. When the *Komagata Maru* entered the Vancouver harbor, it first provoked legal conflicts between the Dominion and provincial authorities regarding jurisdiction over immigration matters, as the former governed coastal waters while the latter oversaw labor and civil rights.[47] The conflicts later evolved into a debate over whether the Punjabi passengers, as British subjects, were entitled to the same civil rights that Canadians could claim when within three miles from the Canada coast.[48] In addition to the entangled currents of Dominion, provincial, and colonial laws, the legal rights of a ship's flag state also complicated the governance of territorial waters. Mawani cited the 1907 monograph *Nationality: Including Naturalization and English law on the High Seas and Beyond the Realm* by Sir Francis Taylor Piggott, an English lawyer who served as the procurer-general of Mauritius and chief justice of Hong Kong. In his book, Piggott questioned the legal status of a ship when it entered foreign territorial waters: "Does the jurisdiction of the Legislature of the flag absolutely prevail? Or does it absolutely cease? Or does it continue to some limited degree by general consent?"[49] Raised by a senior British jurist, these questions demonstrated the high level of ambiguity in coastal jurisdiction, showing that semi-colonial countries were by no means the only political authorities unsettled by intersecting legal orders in their territorial waters.

As such, although imperialism and unequal treaties played important roles in the Chishima case, they were not the sole basis for the Shanghai supreme court's decision. The Saxonia, Franconia, and Komagata Maru cases illustrate how the laws of territorial waters were deeply enmeshed in competing jurisdictional claims over ships, territory, and people at the turn of the twentieth century. The Shanghai supreme court maneuvered at this legal ambiguity to define the Seto Inland Sea as a highway of nations, thereby advancing British interests in East Asian seas and enabling the local Western community to offer an "English lesson" about the "appropriate" use of law to the Japanese "students." Without any written Japanese and international law regarding the jurisdiction over territorial waters, the Meiji government, in the words of its legal consultants Inoue Kowashi and Kaneko Kentarō, was "put at a disadvantage" as it could only cite the vague concept of the three-mile principle to challenge a number of previous British cases and extraterritorial treaties that supported the Shanghai supreme court's decision.[50] Nevertheless, despite suggestions from its advisors that cautioned against continuing the debate on maritime

[47] Mawani, *Across Oceans of Law*, 134.
[48] Ibid., 135.
[49] Ibid., 129.
[50] Inoue and Kaneko, "Inoue Kowashi Kaneko Kentarō tō shojō ittō," *Hishoruisan*, fig 341.

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jurisdiction, the Itō cabinet still filed an appeal to the Privy Council at London––the superior of the Shanghai supreme court––to request a review of the Chishima case.

The Final Instance at the Privy Council

Before submitting the review request, the Itō cabinet had already made up its mind that if the Privy Council favored the P&O's claim, it would escalate the Chishima case into a diplomatic conflict rather than comply with the British court's decision. As Nakagawa Mirai notes, the Chishima case took place in a decade that saw the expanding influence of the "strong foreign policy ideology" group in Japan, which scrutinized every "encroachment upon Japanese sovereignty" with a vigilant eye. Already taking umbrage at the Meiji government's 1893 decision on the mixed residence that allowed foreigners to live with native Japanese in the metropole in 1899, this group viewed the Shanghai supreme court's verdict as one more proof demonstrating the incompetence of the Itō cabinet in protecting Japan from "voracious imperialists."[51] The Diet also placed inquiries into the Itō cabinet's litigation strategy, approving a motion that required the cabinet to explain why it besmirched Japan's reputation by placing the "divine emperor" under the British jurisdiction.[52] In grappling with the strong political backlash, the Japanese foreign minister Mutsu Munemitsu had to call on the public and the Diet to display their "legal knowledge" and "civilized mind" instead of making emotional responses.[53]

The key for the cabinet to overcoming this crisis was, again, the legal status of the Inland Sea. As many Japanese legal scholars pointed out, the Shanghai supreme court's decision mainly rested upon the assumption that the Inland Sea was a highway of nations. These scholars listed a number of diplomatic treaties and administrative regulations as proof of Japanese sovereignty over the Inland Sea.[54] An investigative report conducted by the Meiji government also suggested including administrative documents in the appeal, such as the 1875 Great Council of State declaration that claimed all parts of the Seto Inland Sea as state-owned, the 1886 ordinance that incorporated the Inland Sea into Japanese naval districts, and relevant laws on taxation and penalties involving pilotage, fisheries, defense, naval ports, lighthouses, buoys, etc.[55] However, the final version of the appeal did not emphasize Japanese historical rights and domestic regulations; rather, it highlighted perceived Western recognition of the Meiji government's sovereignty over the Inland Sea. A recent study by Douglas Howland may provide a possible explanation. As he notes, the Meiji government was eager to "assert its sovereignty in ways that were legitimate in the eyes of the Western powers," therefore making significant

[51] Nakagawa, "'Chishimakan jiken' saikō," 18.

[52] *Kokkaigi'in shitsumon no tōben*, JACAR, Ref. C06090977100, 1893, figs 25–32.

[53] Mutsu Munemitsu, "Shūgiin ni oite Chishimakan jiken nitsuki enzetsu," December 2, 1893, *Hishoruisan*, figs 336–37.

[54] See for example, Matsunami Ni'ichiro, "Chishimakan tai 'Ravenna' gō," *Hōgaku kyōkai zasshi* 11, no. 12 (1893): 1014–15.

[55] Anon., "Chishimakan soshō jiken shinsa hōko," date unknown, *Hishoruisan*, fig 335.

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efforts to invoke the language of international law for Japanese national interests.[56] It was in this context, perhaps, that the Itō cabinet decided to rest its claim upon international treaties rather than domestic administrative documents, for it regarded the former as more acceptable legal references in Western eyes.

The appeal first responded to the Shanghai supreme court's argument that the Inland Sea was a highway of nations connecting the Americas with Asia "since the public appearance of foreigners." It contended that Westerners did not use the Inland Sea as a trade route until the 1854 agreements made by the Tokugawa shogunate with the American and British governments, which lifted the centuries-long prohibition for foreign vessels to enter "the land, inland sea, and territorial waters of Japan." It also mentioned that most ships traveling between the two continents did not pass through the Inland Sea unless they intended to visit certain Japanese ports like Hyōgo. In this way, the Meiji government claimed that the Inland Sea was never a natural highway of nations-neither before nor after the 1854 establishment of trade relations between Japan and Euro-American powers. The appeal then turned to the Shimonoseki campaign which, according to the Shanghai supreme court, authorized Western powers to protect their navigational freedom in the Inland Sea by force and thereby precluded the Japanese authorities from exercising exclusive jurisdiction over this internal water. The Itō cabinet provided a different interpretation, arguing that extraterritorial treaties only allowed Western vessels to visit the treaty port Hyōgo through the Inland Sea and the Tokugawa shogunate never offered any further concessions in the Shimonoseki campaign.

The Meiji government also cited the 1870 Japanese Declaration of Neutrality in the Franco-Prussian War that proclaimed the Inland Sea as neutral to foreign vessels. Unlike Sir Thomas Barclay who, as noted earlier, stressed how the declaration demonstrated the legal constraints imposed by the unequal treaties, the Itō cabinet viewed it as the Meiji government's expression of maritime sovereignty.[57] The opposing arguments made by the Itō cabinet and Barclay probably resulted from the fact that they referred to different articles of the declaration. On the one hand, the declaration claimed that "internal waters within ports and bays, together with the adjacent seas that were less than three nautical miles from shore, fell under the jurisdiction of the Meiji government."[58] On the other, it made specific mention of treaty ports, where the Japanese authorities would "contact the respective consulates before sending naval vessels to enforce its orders in the circumstances that foreigners disobeyed the rules of neutrality."[59] As the former delimited the Japanese territorial waters and the latter implied the limits of the Meiji government's jurisdiction within the extraterritorial system, it seems safe to assume that

[56] Howland, *International Law and Japanese Sovereignty*, 4.

[57] Barclay, "Chūgoku naikai," *Hishoruisan*, figs 306–8.

[58] *Boffutsu sensō nitsuketari kyokugai churitsu no gi sūjō*, National Archives of Japan, Ref. 公00369100, 1870, fig 2.

[59] Ibid., fig 31.

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both the Itō cabinet and Barclay could rest their arguments on the declaration to some extent.

Unlike the Yokohama and Shanghai supreme courts that made their decisions within a month, the Privy Council spent more than one year processing the Itō cabinet's appeal before issuing its verdict in July 1895. The verdict refused to support the Meiji government's claim over the Inland Sea, defining it as "obviously open to serious controversy."[60] However, much to the delight of the Itō cabinet, the Privy Council ruled out the P&O's request for counterclaim based on its interpretation of the extraterritorial treaties signed by the Japanese authorities with the British, American, and Austro-Hungarian governments, stressing that all cases brought by the British against Japanese subjects should be heard in the Courts of Japan.[61] This decision, as noted by Richard T. Chang, mainly resulted from "a desire to maintain the basic tenet" of British extraterritorial privileges in Japan––that is, if the Yokohama court was authorized to hear counterclaims against Japanese subjects, the Courts of Japan would be "entitled to entertain counterclaims against British subjects as well."[62]

Although the Privy Council eluded the question of maritime jurisdiction in its verdict, the British government, in fact, had spent nearly two years examining the legal status of the Inland Sea. In September 1893, several weeks before the Shanghai supreme court made its decision, the British Foreign Office requested its legal advisors, the Law Officers of the Crown, to analyze the Chishima case. The latter replied on December 12, 1893, that according to the existing extraterritorial treaties, the P&O's counterclaim against Japanese subjects should not be heard in the British courts.[63] On December 22, 1893, learning that the Meiji government would submit an appeal to the Privy Council, the Foreign Office asked the Law Officers to review the Chishima case again and highlighted the issue of the Inland Sea that did not appear in their first report. It associated the Chishima case with the ongoing Bering Sea arbitration, in which the 1864 Shimonoseki campaign appeared as a legal reference when the United States and British governments debated on the issues of maritime jurisdiction.[64] Despite their divergence on the source of law, both the American and British representatives agreed in the arbitration that the Seto Inland Sea was an "open sea" where "the ships of all countries had the right to pass," even if all its entries were less than six miles wide.[65] In referring to the Bering Sea arbitration, therefore, the Foreign Office

[60] "Judgement of the Judicial Committee of the Privy Council on the Appeal of the Imperial Japanese Government v. The Peninsular and Oriental Steam Navigation Company, from Her Britannic Majesty's Supreme Court for China and Japan (in Admiralty)," July 3, 1895, *FO 480*, fig 222.

[61] Ibid., fig 224.

[62] Chang, "The Chishima Case," 603.

[63] Royal Courts of Justice, "The Law Officers of the Crown to the Earl of Rosebery," December 12, 1893, *FO 480*, fig 152.

[64] *FO 480*, figs 154–155. This is an untitled letter from the Foreign Office to the Law Officer.

[65] *Compte rendu des séances du Tribunal d'arbitrage siégeant à Paris*, 1893, Canadiana, Ref. 14234, 1318.

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probably sought to show that the perception of the Seto Inland Sea as part of the high seas was a common sense shared by Euro-American powers.

However, despite the Foreign Office's emphasis on the issue of maritime jurisdiction, the second reply made by the Law Officers in February 1894 still had no mention of the Inland Sea, indicating that there was "nothing contained in the Judgements now submitted for our consideration to induce us to modify the opinion."[66] In other words, after reviewing the Shanghai supreme court's verdict and the proceedings of the Bering Sea Arbitration, the Law Officers deliberately stayed silent on the legal status of the Inland Sea. This position was then followed by the Privy Council, which regarded the issue of jurisdiction over the Inland Sea as an "open controversy."

Why, then, did the Law Officers keep silent about the legal status of the Inland Sea despite the Foreign Office's requests? In addition to the aforementioned complexity of international maritime practices, political considerations and disagreements from some British legal advisors provided possible explanations. Since the 1894 Anglo-Japanese Treaty of Commerce and Navigation that heralded the 1899 abolition of all Euro-American extraterritorial privileges in Japan, it seemed pointless for the Privy Council to jeopardize Anglo-Japanese relations by supporting Western judicial claims over the Inland Sea, which rested upon previous unequal treaties and would therefore become invalid five years later. Neither could it benefit from favoring the Japanese claims to the Inland Sea, as the Chishima case might establish a legal precedent threatening British maritime interests elsewhere. Moreover, as the historian Geoffrey Marston notes, some British jurists, such as the legal advisor to the Foreign Office W. E. Davidson, highlighted that the Western privileges in the Inland Sea derived from the superior force rather than the recognition from the Japanese authorities. Therefore, regarding the Shimonoseki campaign frequently cited by the Shanghai supreme court and many Western legal scholars, Davidson contended that the forced opening of this strait by Western powers was hardly equated to "an abandonment by Japan of the right" in the Inland Sea.[67]

In this way, despite the failure to acquire recognition from the British government on its claim to the Seto Inland Sea, the Meiji government still succeeded to preserve national dignity by precluding the Meiji emperor from appearing as a defendant in the British court. After the two-year debate on the validity of the P&O's counterclaim, the Chishima case then returned to the British Yokohama court, which would examine the primary cause of the collision. Nevertheless, the Meiji government did not continue the lawsuit but rather accepted the proposal made by the British Foreign Office to reach an out-of-court settlement. In September 1895, two months after the Privy Council's decision, the Japanese authorities agreed to withdraw their complaint after receiving around ninety thousand yen from the P&O for the sinking of the Chishima and the litigation costs.[68] This amount was about one-tenth of the Meiji government's initial

[66] Royal Courts of Justice, "The Law Officers of the Crown to the Earl of Rosebery," February 16, 1894, *FO 480*, fig 167.

[67] Marston, "British Extra-territorial Jurisdiction in Japan," 235.

[68] Unemura, "Chishimakan jiken," 21.

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demand in 1893. As Richard T. Chang notes, with the war profits of one hundred and sixty-five million yen recently acquired from the First Sino-Japanese War (1894–1895), the Meiji government was "probably well disposed to put an end to the drawn-out, costly litigation."[69] Therefore, despite criticism from some Japanese Diet members for abandoning a righteous claim, the Meiji government still accepted the compromise. In 1899, with the abolition of Western extraterritorial privileges in Japan, the Meiji government was no longer obliged to safeguard Euro-American rights of navigational freedom in the Inland Sea that connected the treaty port Hyōgo with the Pacific Ocean. The Chishima case thus marked the first and the last political challenge against the Meiji government's claim to waters off the Japanese archipelago. However, the question of how the coastal State should define and exercise sovereign power in their territorial waters, particularly in the semi-colonial context, was left unanswered.

In the final instance at the Privy Council, as we have seen, political speculation featured in the Japanese and British approaches to the territorial waters issue, whereas the language of maritime laws, in weaving through the entire court hearing, served as a means rather than an end. This political pragmaticism characterized many maritime disputes in other regions as well. For example, at the 1919 Paris Peace Conference, American president Woodrow Wilson advocated for the immunity of neutral merchant ships from capture on the high seas during the wartime period. In contrast, the British government insisted on its wartime rights to search neutral vessels and blockade straits, prompting the U.S. representatives to criticize Britain for eschewing the principle of maritime freedom.[70] However, merely several years later, the U.S. government went against the ideology of maritime freedom by unilaterally expanding its contiguous anti-smuggling zone from twelve to twenty nautical miles, for it implemented sweeping prohibition on the importation and transportation of alcoholic beverages that authorized the American navy to search approaching foreign vessels.[71] Seen in this light, political speculation was central to the practices of maritime laws in territorial waters, laying the ground for continuing tensions and ambiguities in coastal jurisdiction, both historically and in the present aqueous world.

Conclusion

In August 2001, the Norwegian freighter *Tampa* rescued 433 drowning refugees from the high seas near Australia's Christmas Island. Although the captain, Arne Rinnan, tried to enter Australian waters at the insistent demands from the refugee leaders, the Australian government rejected his request. Following hours of futile negotiations, Rinnan declared a state of emergency and entered Australian waters without permission for the safety of his crews and the refugees. The Tampa incident soon generated an international debate over whether the coastal State could forbid the entry of refugees and refuse to

[69] Chang, "The Chishima Case," 605–11.
[70] Matsunami Ni'ichiro, "Kaihō kaitei to Beikoku kaigun," *Kokusaihō gaiko zasshi* 28, no. 5 (1929): 1–7.
[71] Matsunami Ni'ichiro, "Kinshuhō to kaijōshuken (jō)," *Hōgaku shinpō* 39, no. 7 (1929): 949.

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provide them with humanitarian assistance in its territorial waters.[72] The past decade has also seen similar cases in the Mediterranean Sea, where migration crises have raised questions about the humanitarian obligations of the coastal State in its territorial waters.[73] Seen in this light, despite the rapid development in the codification of international maritime law since World War II, jurisdiction in territorial waters continues to pose new challenges to the coastal State in accordance with the evolving international environment.

Much like the Tampa incident, the Chishima case also revealed contested jurisdiction in territorial waters, but it took place in a different geopolitical context. The absence of uniform international practice on coastal jurisdiction left much room for both imperial and semi-colonial powers to rest their political claims upon various legal principles. To the British Empire, unequal treaties enabled it to represent Japanese territorial waters as part of the high seas. To the Meiji government, asserting "sovereignty" was not an essential part of its handling of maritime disputes; rather, it only did so when deemed appropriate, as demonstrated by its different approaches to the Maria Luz, Normanton, and Chishima cases. The third case marked one of the earliest attempts made by the Meiji government to defend its maritime sovereignty against Western encroachment, in which the Japanese authorities skillfully employed the language of international maritime law to fulfill their national interests. In this way, territorial waters, along with the free sea, formed the variegated legal zones in the aqueous world at the turn of the twentieth century, when ubiquitous extraterritorial jurisdiction and ambiguous maritime laws enabled a plethora of political maneuvers off the coasts.

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[72] For more details, see Mark Pallis, "Obligations of States towards Asylum Seekers at Sea: Interactions and Conflicts Between Legal Regimes," *International Journal of Refugee Law* 14, no. 2/3 (2022): 329–64.

[73] For example, see Paul Strauch, "When Stopping the Smuggler Means Repelling the Refugee: International Human Rights Law and the European Union's Operation to Combat Smuggling in Libya's Territorial Sea," *The Yale Law Journal* 126, no. 8 (2017): 2421–48.

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