

Gale Primary Sources:
Regional China and the West, 1759-1972

A Legal Perspective on the Early Treaty Ports: Xiamen (Amoy), 1843-1858

Peter Thilly

Associate Professor of History, University of Mississippi

Map of the Amoy (Xiamen) Harbor. Report on the case of Regina and Hwang Wgo versus William Smith, John Allen and Boderick McRitchie. 1854. MS FO 663 Foreign Office: Consulate, Amoy, China: General Correspondence FO 663/11. The National Archives (Kew, United Kingdom). China and the Modern World.



The first Opium War (1839-1842) between Britain and China's Qing Dynasty concluded with a treaty that – among other important consequences – opened five ports to British commerce, residence, and consular jurisdiction, also known as “extraterritoriality.” Because later wars precipitated further treaties which in turn opened more ports, legalized opium, and clarified a host of other legal issues, historians can sometimes forget the amount of uncertainty that prevailed in the five ports during the first few years after the 1842 Treaty of Nanjing. This essay uses the *Gale Primary Sources* database, *Regional China and the West, 1759-1972*, and in particular the files contained within FO 663 Foreign Office: Consulate, Amoy, China: General Correspondence, to explore that uncertainty. These files, as we shall see, demonstrate a legal messiness that is exciting and worthwhile to try and untangle. There was a surprising lack of clarity between British and Qing officials as they implemented the treaty, and the files demonstrate the agency of numerous unexpected people in the installation of this new and uncertain legal regime.

The port of Xiamen (Amoy) in Fujian Province was not the setting for high-level Sino-British diplomatic engagement, like Guangzhou (Canton). Nor was it the new epicenter of commerce, as Shanghai was swiftly becoming in the 1840s. Xiamen had been a major transshipment center in the opium trade of the 1830s, but the opening of Shanghai had undercut southern Fujian's long-distance traders. This was a regional port, where the complicated vicissitudes of social and economic life perplexed British consuls and Qing officials alike. It was a place with a long history of resistance to the ruling Qing dynasty, where “secret societies” plotted rebellion and great landed lineages dominated the countryside. In the 1840s and 1850s, the region also became one of the most important hubs in the global traffic in Chinese labor. Xiamen is and has long been a transnational city, with close connections to Taiwan, the Philippines, and the islands and peninsula of present-day Indonesia and Malaysia. All of this local context was instrumental in the implementation of the treaty and the evolution of jurisdictional negotiations between Qing officials and British consuls.

The precise nature of British legal authority in the Chinese Treaty Ports was fundamentally uncertain.

No. 11.

Hutia Hongkong.
10th February 1852.

Sir,

I have the honor to acknowledge the receipt of your Despatch No: 7. of the 20th ultimo, forwarding the Police Register of your Consulate for the year 1851, and requesting to be allowed the services of an European Constable.

On examining the Register, I find that in adjudicating upon Case No. 17-20-24 + 37, Corporal punishment has been awarded; I am not aware under what Authority, or by what

G. G. Sullivan, Esquire
Amoy.

Bonham to Sullivan, February 10, 1852. Chief Superintendent of Trade, Inward. 1852. MS FO 663 Foreign Office: Consulate, Amoy, China: General Correspondence FO 663/9. The National Archives (Kew, United Kingdom). *China and the Modern World*. <https://link.gale.com/apps/doc/MHXDGS291396542/CFER?u=webdemo&sid=bookmark-CFER&xid=1b36d52d&pg=16>

Which aspects of English law were the consuls supposed to apply, and how? In Xiamen, the consul had only a few other staff members in the office and no real police force to speak of. Crimes were not prevented; they were investigated in retrospect. Most of the investigations that happened were related to sailors in port on ships flying the British flag, people who were usually from southern India, the Malay peninsula, or the Philippine islands. The consul would have to rely on an employee, usually someone of local ancestry who had been born in Singapore, to translate the testimony of Malay-speaking sailors. Application of English law over this population was often left to the consul's loose interpretation. When one consul

applied corporal punishment after a theft involving some sailors, in late 1851, it precipitated a lengthy correspondence with his superior in Hong Kong that only served to deepen the consul's confusion as to whether corporal punishment was allowable. "I do not disapprove of the mode in which it was dealt with," wrote Sir George Bonham, then Governor of Hong Kong, but consuls should remember that they "render themselves liable to have legal proceedings taken against them."¹ These consuls were the only British authority in several-day's journey, but the world was becoming smaller by the minute. A lowly sailor, even one with brown skin, might conceivably seek assault charges against a white government official who overstepped the bounds of his authority. Or more likely not, as the consul gambled when he had the men whipped.

The thousands of pages of letters contained in FO 663 offer innumerable instances of violence between foreign and Chinese nationals and these documents can help us reconstruct the social life of the early Treaty Port and the negotiation of jurisdiction between British and Qing officials. One such case from 1854, Regina and Hwang Wgo versus William Smith and Broderick McRitchie, occupies an entire folder (FO 663/11) and contains over one hundred pages of testimony and documentation. The case began when Smith met McRitchie and a group of sailors from a British ship called the *Bittern* in a "public house" located just behind the row of British-owned firms at the main harbor (see map).² They drank brandy, "six or eight wine glasses" each.³ The sailors had to find a way back out to their ships after a night of drinking, and Smith invited McRitchie to share some "Foochow tobacco" on board the *Agincourt* before bed.

As the men stumbled towards the wharves, something bad happened. They later claimed to have been followed by a group of people intending to rob them. Lee Ming Bai, a beggar who witnessed the fight, gave the plausible explanation that the brawl had started after the drunken men tried to negotiate with a boatman the fare for a ride back out to the



Map of the Amoy (Xiamen) Harbor. Report on the case of Regina and Hwang Wgo versus William Smith, John Allen and Boderick McRitchie. 1854. MS FO 663 Foreign Office: Consulate, Amoy, China: General Correspondence FO 663/11. The National Archives (Kew, United Kingdom). *China and the Modern World*. <https://link.gale.com/apps/doc/EUAXND741781163/CFER?u=webdemo&sid=bookmark-CFER&xid=afaa78b4&pg=4>

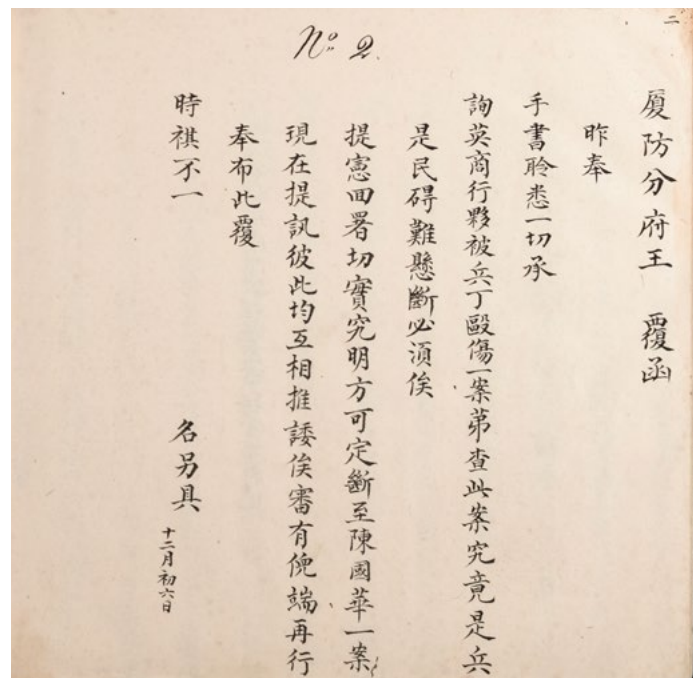
ships. In another account of the case, the foreign men encountered a fortune teller and tried to steal the lantern he was carrying. However it started, and the accounts are both florid and conflicting, a deathly brawl occurred about a mile away from the public house at the wharf near the home of the Reverend Talmadge, "an intricate and winding walk through close Chinese streets" from the tavern.⁴ In the aftermath, when a local fortune teller was found stabbed and dead, the sailor William Smith was pursued by a crowd of locals and detained, delivered up to the consul "bound by the thumbs and arms."⁵ Smith was Black, and his trial therefore offers evidence about not just the negotiation of mixed jurisdiction between Qing and British officials, but also about the experiences of Black sailors in China and under British law in outposts of consular jurisdiction like Xiamen.

One of the most pressing and confounding legal issues in the new Treaty Ports was opium. The drug trade had been the principal reason for the war, with traders like William Jardine being among the conflict's most prominent lobbyists, and yet the 1842

1 FO 663.9, No. 11, Bonham to Sullivan, February 10, 1852.
 2 FO 663.11, Appendix D, Examination of William P. Smith, September 25, 1854.
 3 FO 663.11, Appendix F, Examination of John Allen, October 11, 1854.
 4 FO 663.11, Remarks by the Consul, October 5, 1854.
 5 FO 663.11, Remarks by the Consul, October 5, 1854.

treaty that concluded the so-called “opium war” did not mention opium or clarify anything about its legality. What was a person like the first British Consul at Xiamen, Henry Gribble, supposed to do about the fact that British opium ships were visible in the harbor selling the drug every day? His job was to make sure British traders in the Treaty Port obeyed local regulations and paid due taxes. Gribble decided, as he wrote in a letter to Henry Pottinger preserved in the database under FO 702/72, that he needed to “avoid being the first one to break the treaty.”⁶ So the new consul, on the first day of legal British trade at Xiamen, politely asked the opium merchants to move their ships out of the inner port. His temporary solution, which would last over fifteen years, was to try and separate the tolerated but illegal opium traffic from legal, taxed commerce. Opium ships would have to anchor and do business a few miles out of port, at some islands that are only visible from Xiamen on a clear day. “The British Consul,” summarized Lord Palmerston a few years later, “cannot indeed be expected to assist the Chinese authorities in putting a stop to smuggling.”⁷ The “negotiated illegality” that resulted from this interpretation of the treaty provided traders in the most lucrative item on the market to continue their contraband trade, often paying informal fees (systematized bribes) to the local officials with jurisdiction over their anchorages.⁸

Intimately related to the opium trade (indeed many firms specialized in both) was the traffic in human labor, which took place within a legal grey area much like the drug. Just as opium’s import was officially prohibited yet openly tolerated, the rapid ascension of Xiamen as a port of departure for shiploads full of human cargo was something that was achieved in broad daylight and yet was widely understood to be “contrary to the laws of China.”⁹ The consul who oversaw this rise, Temple Hillyard Layton, was uncomfortable with the legality and morality of the business, and he generally stood in opposition to human traffickers like the merchant James Tait. When Tait contracted to send a few hundred people from Xiamen to New South Wales



Correspondence from the Xiamen Maritime Sub-Prefect (*xiafang tongzhi*) about the riot of December 1852. Chinese letters, Inward. 1851-1853. MS FO 663 Foreign Office: Consulate, Amoy, China: General Correspondence FO 663/56. The National Archives (Kew, United Kingdom). *China and the Modern World*. <https://link.gale.com/apps/doc/OKGEMB700014223/CFER?u=webdemo&sid=bookmark-CFER&xid=8b2ff471&pg=142>

in 1848, Layton wrote that such large shipments of people was something “distasteful to the people of [Xiamen], and that the emigration of children especially may... give rise to a disturbance.”¹⁰ Tait was supported by Layton’s superiors in the British Foreign Office, however, and the business would only grow. Meanwhile, in order to get around British restrictions in shipping human labor to jurisdictions where slavery remained legal, such as Havana, Tait travelled to Manila where he was granted the position of “Vice Consul” at Xiamen for the Spanish government, allowing him to oversee Spanish shipping in the Xiamen harbor and thereby evade the restrictions placed on British ships. He later took on Dutch and Portuguese Vice-Consulships toward a similar end. In this industry, the records show how the actual authority of the British consul was limited. People like James Tait, those who were unencumbered by moral restraints and who were carefully attuned to potential loopholes in the new set of rules, were not only able

6 FO 705.72, No. 3, Gribble to Pottinger, November 3, 1843.

7 FO 663.6, No. 107, Palmerston to Bonham, November 18, 1848.

8 Thilly 2022, Chapter 2.

9 FO 663.6, Murdoch and Ward to Merivale, January 31, 1849.

10 FO 663.6, Murdoch and Ward to Merivale, January 31, 1849.

to take advantage and build up businesses, but they shaped the very system they abused.

In the winter of 1852, Layton's prediction of a "disturbance" over the issue of human trafficking came to fruition. FO 663/9, which contains the 1852 correspondence between the Xiamen consulate and the British Superintendent of Trade, is a rich trove of information about the famous riot of December 1852. The violence started after local officials in Xiamen seized a "crimp" employed by the British merchant Francis Darby Syme. A "crimp" is someone who travelled from the port into hinterland villages to contract laborers for overseas voyages, often by deceit and sometimes by force. They were unpopular figures in the local imagination, as many families in the region had sons, brothers, and nephews who had voyaged overseas and never returned. Syme and a few associates forced their way into the local police office where the crimp was being held and liberated him, precipitating a street fight with some Chinese soldiers during which one of Syme's employees was injured.¹¹ As tensions ratcheted up, there were street robberies and a warlike atmosphere, with British marines surrounding the row of foreign firms on the waterfront and eventually opening fire on the people in the crowd. The documents in the database show us how the British government navigated this crisis, balancing the goal of continuing the traffic in Chinese labor out of Xiamen with the need to pour water on this disastrous public relations fiasco. Syme would need to be punished, however lightly (it was a minor fine), as it was "equally the duty of Her Majesty's officers to protect the Chinese against the aggressions of any of her subjects."¹² Meanwhile, the British Government appointed a "Government Emigration Agent" to try and oversee human trafficking, to find "the best selection of laborers," to secure "their proper treatment on board during their outbound voyage," and to maintain "the fairness and legality of the contracts to be entered into between the colonists and the emigrants."¹³

The traffic in human labor would go the way of opium, which is to say, temporarily offshore. The ill public feeling in Xiamen toward the trade did not die off after

the riot of 1852, and so traders like Francis Syme and James Tait moved their operations a few hundred miles down the coast to the island of Nan'ao (Namoa), near the port of Shantou (Swatow) in Guangdong, an area technically off-limits to British commerce but frequented by opium traders since the early 1830s. The issue of human trafficking was, much like opium, too big and too thorny for the local officials and consuls stationed in Xiamen to solve. These public servants lived at the mercy of a treaty, and when the treaty failed to provide clear solutions, they either looked away or they asked the people involved to move their ships just a bit further out of port.

In examining FO 663 to try and understand how British and Qing officials implemented the 1842 treaty in Xiamen, this essay has barely scratched the surface of just a single folder within the collection. The Xiamen files extend well beyond 1858, of course, into the mid-twentieth century, through revolution, warlordism, and the outbreak of the full-scale Second Sino-Japanese War in 1937. Similar folders exist for other cities that have not experienced sufficient historical attention, such as Yingkou (Newchwang, FO 669), Kunming (FO 668), and Wenzhou (Wenchow, FO 851). A more thorough investigation of these resources will do much to enhance our knowledge of modern Chinese and world history.

11 FO 663.9, No. 61, Brown to Backhouse, December 9, 1852.

12 FO 663.9, No. 61, Brown to Backhouse, December 9, 1852.

13 FO 663.9, No. 63, Brown to Backhouse, December 16, 1852.