

CALEB CUSHING TO GOV.-GENERAL QI-YING, JULY 22, 1844 [CONCERNING THE CASE OF
LEGAL JURISDICTION IN THE CASE OF THE KILLING OF A CHINESE IN AN AFFRAY WITH
AMERICANS]

“I adopt and approve the judging of the gentlemen who officiated on the occasion; for I am constrained to repeat to your Excellency, that the mob who wantonly attacked the foreigners, and the police who culpably neglected their duty in the matter are the parties really to blame, and who ought to be punished, not only for the assault committed on the foreigners, but for the death of Hsü A-man. For that death, the mob and the police deserve to be held responsible, in the eyes of God and of man.”

[from Morse, *International Relations of the Chinese Empire*, p. 328, citing *Chinese Repository*, November, 1845]

CALEB CUSHING TO AMERICAN “CONSUL” AT GUANGZHOU, JULY 22, 1844 [CONCERNING
THE CASE OF LEGAL JURISDICTION IN CHINA]

“The nations of Europe and America form a family of States, associated together by community of civilisation and religion, by treaties, and by the law of nations.

“By the law of nations, as practised in Europe and America, every foreigner, who may happen to reside or sojourn in any country of Christendom, is subject to the municipal law of that country, and is amenable to the jurisdiction of its magistrates on any accusation of crime alleged to be committed by him within the limits of such country. Here the minister or consul cannot protect his countrymen. The laws of the place take their course.

“In the intercourse between Christian States on the one hand, and Mohammedan on the other, a different principle is assumed, namely, the exemption of the Christian foreigner from the jurisdiction of the local authorities, and his subjection (as the necessary consequence) to the jurisdiction of the minister, or other authorities of his own government.

“One or other of these two principles is to be applied to the citizens of the United States in China. There is no third alternative. Either they are to be surrendered up to the Chinese authorities, when accused of any breach of law, for trial and punishment by the magistrates of China, or (if they are to have protection from their country) they come under the jurisdiction of the appointed American officer in China.

“In my opinion, the rule which obtained in favour of Europeans and Americans in the Mohammedan countries of Asia is to be applied to China. Americans are entitled to the protection and subject to the jurisdiction of the officers of their government. The right to be protected by the officers of their country over them, are inseparable facts.

“Accordingly, I shall refuse at once all applications for the surrender of the party who killed Hsü A-man; which refusal involves the duty of instituting an examination of the facts by the agency of officers of the United States.”

[from Morse, *International Relations of the Chinese Empire*, p. 329, citing *Chinese Repository*, November, 1845]