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Evenhandedness and Excess: The Diverse Fates of Ethnic Minorities and Women in

Qing Criminal Justice

Abstract

The paper will compare the treatment of women and ethnic minorities in the adjudication of capital crimes. By the eighteenth century, the multiple procedures for trying and sentencing capital cases and the propensity to seek leniency were well-established hallmarks of Chinese criminal justice. With the ultimate decision over life or death resting in the hand of the emperor, the elaborate review of capital crimes became the most important ritual demonstration of the emperor's wisdom and mercy. In this way, comparing the treatment of women and ethnic minorities in capital crimes exposes a range of issues related to the ideals of imperial benevolence and as well as the bureaucratic burdens that the exhaustive review and sentencing of capital crimes entailed. While the treatment of ethnic minorities was evenhanded and cautious, the treatment of women was more complex depending on the relationship between victim and perpetrator. While women were treated no differently than men in most homicides, the punishment of adulterous wives who conspired to kill their husbands was excessive and cruel. Belying the otherwise sparing use of capital punishment, gender bias legitimated the most barbarous penalty imaginable for women: lingering death (凌遲). Ostensibly based on a benevolent patriarchal hierarchy, Chinese law unfairly discriminated against women in practice and principle, but nothing compared to the legally authorized penalty of lingering death for adulterous wives who conspired with lovers to kill their husbands. The severe punishment was shocking not only in its cruelty but also its legality under Qing law.