

# Evenhandedness and Excess: The Diverse Fates of Ethnic Minorities and Women in Qing Criminal Justice

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## Abstract:

Unlike twentieth-century Chinese constitutions, the Qing code (大清律例) did not include explicit guarantees of equality or legal rights based on race, ethnicity, religion, class, or gender. On the contrary, traditional Chinese law embraced and codified social hierarchy and the Qing legal code was replete with legislation that unequivocally discriminated based on seniority, gender, and ethnicity. By modern standards Qing law was blatantly discriminatory; moreover, the protection of patriarchal privilege was foundational to Qing political power. While modern constitutions have broadened legal rights in pursuit of mass political support, the Qing code jealously guarded the privileges of the ruling elites. Nowhere were the inequities of traditional Chinese law more obvious and consequential than in the adjudication of capital crimes in which the relative status of perpetrator and victim determined the degree of fault and the severity of punishment.

As Qing judicial records reveal, ethnicity and gender were relevant categories in the legislation and disposition of capital crimes. Inter-ethnic conflict was common on the frontiers of Han expansion in the eighteenth century but, despite laws that flatly discriminated against ethnic minorities, district magistrates usually were evenhanded when handling capital cases involving Yi and Han. Judicial officials in the central government were particularly attentive to violent crimes involving minorities. In one homicide case the Board of Punishments ordered a follow-up investigation into Han settlements on Yi land and in another case the Board of Punishments denied a statutory pardon for a Han who killed a Yi perhaps due to worries about exacerbating ethnic tensions in the local community.

The treatment of women in capital cases was more complex and fraught with political and

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ideological considerations. Kinship and gender were central to the determination of fault in capital crimes. The Qing code was a bastion of patriarchal privilege, and crimes that impinged upon the prerogatives of senior males were dealt with severely. When a woman committed a capital crime against an unrelated male, the Qing code did not discriminate against her but if her victim was a senior male relative her punishment was invariably harsher. Most appalling was the treatment of adulterous wives who conspired with their lovers to kill their husbands. Premeditated killing was a serious crime, but the punishment for adulterous wives, lingering death, also known as death by a thousand cuts, was unspeakably cruel and extreme.

Although relatively few in number, a qualitative analysis of capital cases involving minorities or women provides invaluable and significant insights into the relevance of gender and ethnicity in Qing criminal justice. While the conclusions must be tentative, the adjudication of capital cases involving women and minorities nevertheless exposes deep tensions between principle and praxis in Qing criminal justice. Qing emperors, like their predecessors, employed the rhetoric of leniency but also like their predecessors they condoned the harshest punishment when the crime challenged patriarchal privilege. While the formal and informal practice of leniency was the norm in Qing criminal justice, when a crime challenged the ideological foundations of the dynasty, the cruelest form of capital punishment was used without hesitation.

Key Words: adulterous wives, death by a thousand cuts, ethnic violence, capital punishment, Qing criminal justice

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## Introduction

Unlike twentieth-century Chinese constitutions, the Qing code (大清律例) did not include explicit guarantees of equality or legal rights based on race, ethnicity, religion, class or gender. Most likely, a Qing judicial official would have understood these distinctions, but not the modern concepts of equality before the law or protection of legal rights based on these distinctions. In fact, the Qing code was replete with legislation that unequivocally and unabashedly discriminated based on ethnicity, seniority, and gender. Chinese law had long embraced and codified gender hierarchy. Modeled after the patriarchal family, this hierarchy was considered natural and necessary for maintaining social order. Ideally represented as benevolent, this legally enshrined discrimination was a bulwark of elite male privilege. Nowhere were these hierarchal principles more obvious or more consequential than in the administration of criminal justice, particularly capital crimes in which the relative status of perpetrator and victim often determined the degree of fault and the severity of punishment. Furthermore, because capital crimes were subjected to precise, uniform, and exhaustive judicial and sentencing reviews at every level of administration from the district magistrate (知縣) to the emperor, these records provide historians with a unique body of data for studying a wide variety of legal issues. Given the enormous resources devoted to the adjudication of capital crimes and the annual review of death sentences, the disposition of capital crimes provides a rich documentary source and a unique opportunity to examine

ethnic and gender biases in the Qing legal system.

The field of Qing dynasty legal studies has flourished in recent years, in part due to the growing availability of legal archives. For example, my study of violent disputes over property rights sampled 630 cases from the over 56,000 extant reports of homicides related to disputes over land and debt in the Qianlong (1736-1795) that are available at the Number One Historical Archives. For reasons related to the economic issues and for comparative purposes the study was limited to three provinces, Shandong, Sichuan, Guangdong provinces during selected years in the Qianlong reign.<sup>1</sup> In order to obtain the sample of 630 cases for these three provinces I had to examine over ten thousand records sampled at roughly five-year intervals that occurred throughout the Han(漢) Chinese territories of the Qing Empire.<sup>2</sup> The eight cases involving women and ethnic minorities analyzed below were drawn from this larger study. The geographic and temporal limitations notwithstanding, these cases are representative of the procedures and tenor of reporting of the thousands of cases I have read.<sup>3</sup> Although they are relatively few in number, a qualitative analysis of capital cases involving members of ethnic minorities<sup>4</sup> or women<sup>5</sup> provides invaluable

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<sup>1</sup> I relied on routine memorials of capital crimes related to disputes over land and debt (內閣題本刑科, 土地債務類) to study violent disputes over property rights in the Qianlong reign in Guangdong, Shandong, and Sichuan. See Thomas Buoye, *Manslaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth-century China* (New York: Cambridge University Press, 2000). For a detailed discussion of the archival collections sampled for this study see appendix A. In the course of examining more than 10,000 cases I became interested in the complex procedures for the review of capital crimes and the composition of case records.

<sup>2</sup> Memorials to the Board of Punishments, do not include cases from border territories that were historically not administered under the central bureaucracy, such as Tibet, Xinjiang, Mongolia, and Manchuria.

<sup>3</sup> While there was a long trend toward streamlined reporting, one of the most striking features of capital case records is their consistency and regularity over time and across jurisdictions. For a detailed discussion of reporting and how case narratives were shaped to favor leniency, see Thomas Buoye, "Suddenly Murderous Intent Arose: Bureaucratization and Benevolence in Eighteenth Century Qing Homicide Reports," *Late Imperial China* 16.2 (December 1995), pp. 95-130.

<sup>4</sup> Members of ethnic minorities made up small percentage of the total Qing population but there were large concentrations in the southwest. As noted above, the collection of routine memorial to the Board of Punishments did not include cases that occurred in Manchuria, Mongolia, Tibet, or Xinjiang province.

<sup>5</sup> Historically, males were more likely to commit homicides and the victims of violent crime were more likely to be male. This gender difference in violence and capital crime held true for Qing

and significant insights into the relevance of gender and ethnicity in Qing criminal justice. While the conclusions must be tentative, the adjudication of capital cases involving women and minorities nevertheless exposes deeper tensions between principle and praxis in Qing law.

## Review of Capital Crimes

Under Chinese criminal justice, most capital sentences were subject to a painstaking judicial and sentencing review that usually culminated in the annual autumn assizes (*qiushen* 秋審).<sup>6</sup> The Qing judicial ethos did not champion “hanging judges,”<sup>7</sup> nor was there a powerful Chinese religious disposition equivalent to biblical “eye-for-an-eye” retribution that influenced some traditional Western legal codes. On the contrary, the annual review of capital sentences was a public venue in which the emperor could, and often did, display his

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China. Studies that have employed capital case records to examine gender issues have tended to focus on another category of capital case records 內閣題本刑科，婚姻姦情類. According to Lai Huimin there were over 70,000 extant cases in this category for the entire Qing dynasty and these included 18,500 cases in which husbands killed their wives and more than 4000 cases involving rape. See 賴惠敏，〈從檔案看性別——清代法律中的婦女〉（*Cong dangan kan xingbie—Qingdai falu zhong de fumu*），收入李貞德主編，《中國史新論：性別史分冊》（台北：聯經出版事業公司，2009），頁379. Another excellent study of gender politics in the mid-Qing that has employed these archives is Janet M. Theiss, *Disgraceful Matters: the politics of chastity in eighteenth-century China* (Berkeley: University of California Press, 2004). Similarly, Alison Sau-Chu Yeung made effective use of these sources in her dissertation thesis, “Female Criminality in Qing China,” UCLA Ph. D. Thesis, 1997.

<sup>6</sup> The best explanation of the autumn assizes in English is M. J. Meijer, “The Autumn Assizes in Ch’ing Law” *T’oung Pao LXX* (1984), pp. 1-17. Meijer here corrects some longstanding misperceptions of the autumn assizes. See also 那思陸 (Na Silu), 《清代中央司法審判制度》(*Qingdai zhongyang sifa shenban zhidu*) (台北：文史哲出版社，1992)。

<sup>7</sup> The concept of the “hanging judge,” a judge who embraced the use capital punishment, has a long history in the United States. A classic example from American history was Judge Isaac Parker a federal judge in Fort Smith Arkansas. Known as a ‘hanging judge’ Parker sentenced 79 nine individuals (most of whom were Native Americans) to death between 1873 and 1896. See Baker, David V. “American Indian Executions in Historical Context,” *Criminal Justice Studies*, 20: 4 (2007), pp.315-373.

benevolence and mercy. Formal procedures for the review of death sentences, as well as an array of statutory pardons for sons of aged parents or a widowed mother, or individuals who killed while they were defending a parent from assault, provided ample opportunities to mitigate punishments. By the mid-eighteenth century judicial officials evaluated thousands of death sentences each year. No other routine matter placed greater demands on the time and energy of the Qing bureaucracy.

Procedures for reviewing capital cases varied throughout the course of Chinese history, but centralized control over the adjudication of capital cases and the review of capital sentences reached its zenith in the Qing dynasty. By the eighteenth century the multi-tiered process for trying and sentencing capital cases and a propensity to use capital punishment sparingly were hallmarks of Chinese criminal justice. The rhetoric of leniency permeated the judicial system from top to bottom. As the Kangxi emperor noted in his preface to the revised Qing code in 1678: "I have the utmost feeling for human life, especially for that of My people; and where at all possible, I am unwilling to impose the death penalty."<sup>8</sup> Similarly, Huang Liuhong, author of a widely circulated seventeenth-century administrative handbook for county magistrates, 福惠全書 (*Fuhui quanshu*) stated: "the magistrate must always lean on the side of leniency. If there is one iota of reason for the suspect to be exonerated, the magistrate must explore the point to mitigate the punishment."<sup>9</sup> Historically, the rhetoric of justice clearly favored leniency over severity. Equally important, the elaborate and time-consuming judicial procedures for sentencing capital crime would indicate that concern for human life underlying the rhetoric was sincere. The question remains, however, whether the treatment of ethnic minorities and women conformed to judicial norms.

Despite their alien origins, Qing rulers, like their Han predecessors, accepted the underlying ideological premises of Chinese criminal justice based on patriarchy. At the same time, the Manchus, like other conquest dynasts, explicitly legislated preferential treatment for themselves as well as other ethnic minorities but also discriminated against

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<sup>8</sup> Edward Alabaster, "Dips into an Imperial Law Officer's Compendium," *Monumenta Serica*, Vol. 2, (1936), pp. 426-36, p. 427.

<sup>9</sup> Huang, Liuhong, *A Complete Book Concerning Happiness and Benevolence: A Manual for Local Magistrates in Seventeenth-Century China*, translated and edited by Chu Djang. (Tucson, Arizona: University of Arizona Press, 1984), p. 65.

the ethnic groups whom they struggled to subjugate in southwest China.<sup>10</sup> By modern standards Qing law was flagrantly discriminatory; moreover, the protection of patriarchal privilege was foundational to Qing political power. In these ways, the Qing and modern Chinese legal systems reflected vastly different political objectives. While modern constitutions have broadened legal rights in pursuit of mass political support, the Qing code jealously guarded the privileges of the ruling elites.

## Evenhandedness and Excess

While there was no historical precedent for legal protections based on ethnicity or gender, even a cursory reading of the Qing archival record reveals that ethnicity and gender were relevant categories in the legislation and adjudication of capital crimes. At first glance there would appear to be little sympathy for non-Han minorities in the Chinese law. Legal discrimination and ethnic pejoratives<sup>11</sup> were flagrantly written into the Qing code. For example, a statute proposed in 1727 during the Yongzheng reign (1723-35) banished the parents, brothers, and children of members of non-Han groups who committed homicide or kidnapping. With harsher penalties than those given to Han Chinese, the law was clearly biased and obviously facilitated the removal of indigenous peoples from contested frontier regions. Although such blatantly prejudicial laws remained on the books, the disposition of capital cases involving ethnic minorities and Han Chinese appears evenhanded and cautious in the Qianlong reign (1736-1795). Inter-ethnic conflict in southwest China was a persistent concern for Qing rulers throughout the eighteenth century, and judicial officials in the central government were obviously worried about exacerbating ethnic tensions. As the cases examined below reveal, district magistrates also addressed concerns about inter-ethnic tensions when they adjudicated capital crimes.

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<sup>10</sup> Marinas Johan Meijer, *Murder and Adultery in Late Imperial China: A Study of Law and Morality* (Leiden: Brill, 1991), p. 31. Meijer notes that since the Yongzheng reign discriminatory laws were some time “tucked away in other sections of the General Rules or in the chapters on adjudication.” For example, statute 45.3 provided that the parents, brothers, and children of individuals convicted of murder or kidnapping could be deported.

<sup>11</sup> Terms such as 猓, 矜, 獐, and 蠻 can be found in the Qing code. See statutes 45.3 and 365.1.

The treatment of women in capital cases was also fraught with complex political and ideological considerations. Ideologically, the Qing code was a bastion of patriarchal privilege, and crimes that challenged these prerogatives were dealt with harshly, particularly when the perpetrators were junior relatives or women. Kinship and gender were central to the determination of fault in capital crimes. For a woman, her relative status as superior or inferior was variable within the extended family where one could simultaneously be both a child and a parent, but within the nuclear family a woman was always inferior to her husband. When a woman committed a capital crime against an unrelated male, the Qing code did not discriminate against her. However, if her victim was a senior male relative she was automatically at greater fault and her punishment was invariably harsher. Most appalling was the treatment of adulterous wives who conspired with their lovers to kill their husbands. Premeditated killing was a serious crime, but the punishment of adulterous wives was unspeakably cruel. Though these crimes usually were conspiracies between the wives and their lovers, the wives were more severely punished than male lovers. Indeed, when an adulterous wife conspired to kill her husband, the crime was so offensive to the patriarchal privilege that its punishment overrode all principles of leniency. Belying the otherwise sparing use of the death penalty, the inferior legal standing of women and the shocking nature of the crime legitimated the most barbarous form of punishment under Qing law: “lingering death” (凌遲), which entailed flaying, dismemberment, and decapitation.<sup>12</sup>

## Sources

Given the gravity of capital offenses and the exhaustive procedures of review, case records in the form of routine memorials (刑科題本) are an excellent source for examining the tensions between legal principles and praxis in Qing criminal justice. Sampling cases directly from the archives provides a somewhat different perspective from Qing-era compilations of precedent-setting cases that were meant to address complex legal issues. Reading case compilations, researchers can get a feel for the lively discussions of the finer

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<sup>12</sup> Also lingering death has also been translated as “death by a thousand cuts” or “death by slicing.”



points of the law among provincial officials, the Board of Punishments, and the Emperor. From this perspective one perceives powerful roles of the central government and Emperor in overruling provincial decisions. Sampling hundreds of cases from archival sources, on the other hand, one gets a better understanding for the routine workings of the criminal justice system while obtaining invaluable insights into the everyday struggles of the common people.<sup>13</sup> From this perspective the researcher quickly also becomes attuned to the familiar rhetoric and formulaic narratives of “routine” capital cases. One can attribute this effect to a number of factors, not the least of which could be that the details of even the most serious crimes were more mundane than the dramatic depictions of fiction. More to the point, the bureaucratic burden of judicial review over the course of the eighteenth century dictated an increasingly terse and straightforward style.<sup>14</sup> Ideally, clarity and concision would be valued in any elaborate bureaucratic process, but after reading hundreds of reports, one also suspects that bureaucratic self-interest was also at work. During the Qianlong reign, thousands of capital cases were under review every year. Unambiguous reports eased the burden of review and reduced the chances that cases would be returned for retrial.

Unlike the precedent-setting cases found in large compilations, the overwhelming majority of case records, regardless of the county or province of origin, have a recognizable tone and style. Anyone who reads these documents quickly becomes familiar with their distinctive rhetoric and narrative style. Most strikingly, the typical case record downplayed criminal intent and emphasized happenstance. This approach to reporting was consistent with advice contained in administrative handbooks: “a cardinal principle in

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<sup>13</sup> Paola Paderni captured this aspect of the sources in her study of elopements. As Paderni writes, “Through the case records emerge fragments of everyday life, human and social landscapes, individual stories where feelings appear in their complex interaction with interests and material goals.” See Paola Paderni, “I Thought I Would Have Some Happy Days: Women Eloping In Eighteenth-Century China,” *Late Imperial China*, Volume 16 (June 1995), pp. 1-32. Better access to legal archives has enabled a growing literature on legal and social history. In addition to Paderni’s work, Jane Theiss, Lai Huimin, and Matthew Sommers have sampled 題本刑科, 婚姻姦情類 to study gender and law.

<sup>14</sup> Handbooks on government administration advised district magistrates to make their reports “understandable at a glance.” “令上級一目了然為宜，毋需再細研其中證言和招供。”黃六鴻，*福惠全書*，p. 288.

the administration of justice is that the magistrate should be lenient rather than harsh and that it is better to be compassionate than to be arbitrary.”<sup>15</sup> Based on my reading of capital case reports, most district magistrates took this advice to heart.<sup>16</sup> Keeping in mind that most individuals convicted of capital crimes were imprisoned pending final sentencing after review at the autumn assizes, in my opinion, the style of reporting was designed to obtain sympathy for the accused and to mitigate punishments during the sentencing review process.<sup>17</sup>

## **Ethnic Minorities and Capital Crimes**

Impressed with the tendency to construct case narratives that facilitated clemency, my current study of Qing criminal justice has purposefully focused on extreme or unusual capital cases that we might expect would test the “limits of leniency.” One approach has been to examine cases involving minorities to determine if ethnicity had any significant influences on the sentencing of accused criminals.<sup>18</sup> Inter-ethnic conflict was common on the frontiers of Han expansion in the eighteenth century. Qing magistrates were clearly sensitive to violence involving ethnic minorities and evenhandedness marked their handling

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<sup>15</sup> Huang, Liuhong, *A Complete Book Concerning Happiness and Benevolence: A Manual for Local Magistrates in Seventeenth-Century China*, p. 65.

<sup>16</sup> It is well-known that district magistrates employed legal secretaries to assist who were likely the authors of most reports though the magistrate was ultimately responsible. Given the automatic review of capital case records at every level of judicial administration, it was also true that the capital case record was the only document that a magistrate knew in advance would be read by all his superiors including the Emperor.

<sup>17</sup> For a more detailed discussion of how narratives were shaped to favor leniency, see Thomas Buoye, “Suddenly Murderous Intent Arose: Bureaucratization and Benevolence in Eighteenth Century Qing Homicide Reports,” *Late Imperial China* 16.2, pp. 95-130.

<sup>18</sup> Sichuan was one of the three provinces I focused on for my study of property rights. The three provinces compared were Guangdong, Sichuan, and Shandong, each of which revealed a slightly different economic and social profile. Viewing these provinces through the prism of capital crimes related to property right disputes, we find the more violence in Sichuan, desperate poverty in Shandong, and a more settled if not contentious society in Guangdong. Only Sichuan had cases of inter-ethnic violence.

of these cases. All four cases examined below occurred in Sichuan province, which still had many of the characteristics of a frontier society in the Qianlong reign. A militarily strategic region that had suffered a severe drop in population during the Ming-Qing transition, the province was a politically sensitive jurisdiction where provincial officials were subjected to intense scrutiny during the early decades of the Qing.<sup>19</sup> By the turn of the eighteenth century, Han migrants flowed in to the province encouraged by a generous tax breaks and the availability of land.<sup>20</sup> According to one source, 1.5 million migrants arrived from 1667 to 1707.<sup>21</sup> Many of these recent arrivals came from Hunan and Hubei; there were also settlers from Gansu, Guangdong, Guizhou, Guangxi, Jiangxi, Shaanxi, and Yunnan.<sup>22</sup> Unmarried young males tend to lead resettlement and studies of crime and demography have consistently found that young males are disproportionately involved in violent crime as both victims and offenders.<sup>23</sup> The influx of land-hungry Han settlers in areas with large populations of ethnic minorities only exacerbated the potential for conflict. During the Kangxi reign (1661-1722) the official policy was to allow indirect rule through local chieftains (土司) while civilizing the local population using the Chinese education system. The Yongzheng emperor (1723-35) wanted greater control and this required replacing the system of indirect rule with centrally appointed officials.<sup>24</sup> Yongzheng complained about “treacherous Chinese fugitives trading on their literacy in Chinese’ to collude with the native chieftains against the non-Chinese commoners.”<sup>25</sup> Yongzheng was also responsible for discriminatory measures against native tribes in the southwest including the measure that deported the parents, brothers and children of indigenous people who were convicted

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<sup>19</sup> Dai Yingrong, *The Sichuan Frontier and Tibet: Imperial Strategy in the Early Qing* (Seattle: University of Washington Press, 2009), p. 28.

<sup>20</sup> Dai Yingrong, *The Sichuan Frontier and Tibet: Imperial Strategy in the Early Qing*, p. 72.

<sup>21</sup> Joanna Waley-Cohen, *Exile in Mid-Qing China: Banishment to Xinjiang 1758-1820* (New Haven: Yale University Press, 1991), pp. 16-17.

<sup>22</sup> Thomas Buoye, *Manslaughter, Markets, and Moral Economy*, chapter six.

<sup>23</sup> See Scott J. South and Steven F. Messner, “Crime and Demography: Multiple Linkages, Reciprocal Relations,” *Annual Review of Sociology*, 26(2000), pp. 83-106.

<sup>24</sup> John E. Herman, “The Cant of Conquest”, pp.135-71. in *Empire at the Margins: culture, ethnicity, and frontier in early modern China*, eds. Crossley, Pamela Kyle, Helen F. Siu, and Donald S. Sutton (Berkeley: University of California Press, 2006), p. 161.

<sup>25</sup> Kent C. Smith, “Ch’ing, Policy and the Development of Southwest China; Aspects of Ortai’s Governor-Generalship, 1726-1731,” Yale University Ph. D., 1970, p. 45.

homicide or kidnapping.<sup>26</sup> During the Qianlong reign aggressive efforts to extend control over western Sichuan provoked two rebellions in 1742 and 1771, both of which put down “with considerable difficulty.”<sup>27</sup> Throughout the eighteenth century central government officials remained sensitive to social unrest in Sichuan and local ethnic leaders continued to play a role in governance in many areas.

Not surprisingly, given the sharp influx of new settlers, clashes between Han settlers and Yi (夷) natives showed up in the capital case records. Interestingly, three of four incidents were Han killing Yi in disputes over land or debts. A fourth dispute occurred between members of the Miao (苗) minority. In each of the three cases involving Han on Yi violence, the judicial decisions were fair and free of bias. In fact, the Board of Punishments intervened to quash an effort by local and provincial level officials to grant a statutory pardon (*liuyang* 留養) to a Han killer who was the only son of an aged father. The incident occurred in Xichang County, (西昌縣) Sichuan in QL16.10.9.<sup>28</sup> Yu Tengwen (俞騰文) sold a horse to Xiaba (呷八), who was Yi. Yu’s senior cousin<sup>29</sup> (堂兄) Yu Tengan (俞騰漢) had acted as middleman in the deal. Xiaba paid approximately two thirds of the price in cash at the time he received the horse and paid the difference in-kind with two sheep and a lamb about six months later. Xiaba provided the sheep and lamb to Yu Tengan, who, unbeknownst to Yu Tengwen or Xiaba, kept the lamb for himself. Tengan would later testify that for his services as middleman he was entitled to the lamb as “thanks payment” (謝資). While such payments were common, Tengan had neglected to inform either Tengwen or Xiaba that he had kept the lamb for himself. For his negligence, Tengan would later be punished for creating the situation that led to a homicide.

Violence erupted on QL 16.10.9, five months after Xiaba had assumed that he had paid in full for the horse. Tengwen bump into Xiaba and Xiaba’s neighbor Paiza (拍咱) when they were returning home from the market in Xicheng at dusk. Tengwen dunned Xiaba who told him that he had already paid Tengan. Tengwen did not believe him. Insisting

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<sup>26</sup> Marinus Johan Meijer, *Murder and Adultery in Late Imperial China: A Study of Law and Morality*, p. 31.

<sup>27</sup> Joanna Waley-Cohen, *Exile in Mid-Qing China: Banishment to Xinjiang 1758-1820*, p. 17.

<sup>28</sup> XKTB 刑科題本 0942, QL 18.5.14.

<sup>29</sup> Yu Tengan was technically a senior clansman though at 21 sui he was only one year older than Yu Tengwen.

that they settle the matter immediately, Tengwen wanted Xiaba to accompany him to meet with Tengan. Paiza tried to stop Tengwen because it was already late in the day. Tengwen “disliked his excessive attention to other people’s business” ( 惡其多管閒事 ) and he slapped him on the cheek. The two men struggled and Tengwen punched Paiza in the left side of his chest and knocked him to the ground. Paiza cursed him and would not let go Tengwen’s right sleeve. Unable to free himself from Paiza’s grip Tengwen raised his right foot to stomp on Paiza’s hand but “unexpectedly” hit his left breast. Xiaba ran away in fear and Tengwen also left the scene. Paiza was seriously injured. He spent the night in the home of a soldier ( 塘兵 ) named Li Gui ( 李桂 ). Six days later Paiza died from his wounds.

As homicide cases go, other than the inter-ethnic violence, this one was unexceptional. The magistrate who initially investigated and tried the case appeared to be sympathetic to Tengwen’s plea for a statutory pardon to care for his aged father. As the sole support of his aged father Yu Xingtian ( 俞性天 ) who was 77 sui, Tengwen fulfilled one key criterion for the pardon. In a revealing example of how an emotionally charged deposition could serve to influence sentencing, Wei Xueshi, ( 衛學詩 ) the Xichang county magistrate, included poignant testimony in the Xingtian’s deposition in which the father noted that he had long been widower and that he was “completely dependent on his son for support” ( 全靠兒子養活 ). Xingtian concluded his appeal for mercy claiming that he was too old to find work, he had no other sons, and that he would starve to death if his son was made to answer for his crime ( 小的今年老不能尋活家中又無次丁若把俞騰文問罪小的就要餓死了只求開恩 ). Keeping in mind that the content and tone of the initial report was foundational to both the judicial review and the sentencing review that took place at the autumn assizes, it was clear this district magistrate was creating a narrative that favored a pardon for Tengwen.

In addition to the pleas for mercy from the accused killer and his father, the report also included a deposition from the victim’s two surviving younger brothers, Jiashi ( 甲施 ) and Juepo ( 覺坡 ) who stated that they could support their own father who was 66 and a widower. This testimony addressed another uncharacteristic retributive criterion in the statute at that time: amnesty could not be granted to the killer if the victim had been the sole support of his own father. Interestingly, the deposition of the surviving brothers also verified that Yu Tengwen was sole support to his father, thus giving the appearance that the victim’s family did not oppose mercy for Yu Tengwen. The report also clearly stated

that there was no longstanding animosity between the victim and killer, a standard and necessary comment in case reports that indicated there was suspicion of premeditation. Similarly, blame for the killing was shared with Yu Tengan, the greedy middleman who kept the lamb without informing the parties to the exchange, and Tengan was sentenced under the “doing what one should not do” law ( 不應爲律 ) for creating a situation that led to the deadly encounter. Finding Tengan guilty for creating the situation also mitigated the blame that fell on Tengwen. Clearly the county magistrate was presenting evidence and a narrative that could facilitate clemency for Yu Tengwen.

The county magistrate concluded his report with a formal and explicit plea for mercy based on the statute that granted pardons to care for aged parents . The plea succinctly and systematically addressed each of the legal criteria. For example, testimony from clansman and neighbors corroborated the fact that Yu Tengwen was the only child of an aged father while Paiza’s father had two surviving sons to care for him. The magistrate also noted that the altercation arose spontaneously due to a debt dispute, which meant there was no longstanding grudge or premeditated violence. Based on the evidence that the accused had only struck two blows, had not used a weapon, and that the victim had died six days after the incident, the magistrate found that the incident was a “light matter” that met the criteria for a pardon to care for aging parents ( 尙屬理直情輕實與留養之例相符 ). The initial report concluded with a request for the Board of Punishment to consider the matter and to determine if a pardon could be granted. As was typical of most capital case reports, the prefectural and provincial reviews echoed the district magistrate’s request.

Despite what appeared to be a rather strong argument, the Board of Punishments rejected the pardon request. The Board’s statement observed that according to the law in a case of assault if the wounds are light and there is horseplay or accidental death you may permit *liuyang*. But, if the attack really was unjustified ( 理曲 ) or a weapon was used and if there were repeated wounds on the victim, the matter is serious. Each criminal must be judged on the evidence of the case to determine if a pardon can be permitted. The Board went on to argue, contrary to the case record, that the violence was excessive. As the Board recapped the events Yu Tengwen tried to force Xiaba to accompany him to confront Yu Tengan face to face. Paiza intervened because it was late. (The implication was that Paiza was merely being reasonable and had not taken sides in the argument.) Nevertheless, Yu

Tengwen suddenly punched Paiza and slapped his cheek. Paiza had not yet hit back when Tengwen again struck his chest and stomped on his breast. Paiza subsequently died. The rebuttal concluded that the wound was not light and that the case does not fit the substitute for a pardon.

This case is telling for several legal as well as political reasons. Interestingly, from the county magistrate to the Board of Punishment each judicial official directly addressed the legal conditions for the pardon. Ultimately, the pardon hinged on one's interpretation of the severity of Tengwen's assault on Paiza. Ignoring the agreement of the county, prefectural, and provincial judicial officials the Board of Punishments rejected the request because the accused had inflicted two serious injuries on the victim who had not made an effort to defend himself. The evidence was open to interpretation and one wonders if the recommendation for pardon would have been upheld if this were a case of Han on Han violence. Legally the Board's argument was reasonable but strict. Provincial officials did not deem the violence to be "excessive" but the Board of Punishments with a lower threshold for violence overruled them. The difference of opinion between central and local judicial officials may have had more to do with politics than law. Han-Yi violence in Sichuan was a longstanding concern of the central government. Had Tengwen been pardoned he would have remained in his community to care for his father. The local Yi community may have seen this as unfair and it might have provoked retaliatory violence. Instead Tengwen was sentenced to strangulation and imprisoned awaiting final sentencing at the autumn assizes. Given the circumstances of the crime it was highly likely that his sentence would be reduced to banishment and his life would be spared. Although Tengwen's life would have been spared either way, banishment removed Tengwen from his home village and reduced the possibility of retributive violence from the local Yi community. Perhaps larger political concerns shaped the central government's legal judgment.

The influx of Han migrants continued during the Qianlong reign even though land was no longer abundant. Evidence from homicide cases reveals that newcomers were frequently embroiled in violent disputes over land with indigenous people as well as Han settlers.<sup>30</sup> As

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<sup>30</sup> Capital case records always list the home county of the accused. In 125 homicides related to land disputes in a sample of cases for 5 years during the Qianlong reign, 63 cases involved migrants

the killings of Yuezi (約自) and Baoshou (保受) illustrate Han encroachment on Yi lands could have deadly consequences.<sup>31</sup> The incident occurred in Ningyuan County (寧遠縣) in Sichuan on QL 43.3.22. Apparently, a local Yi leader (土千戶), Lu Jingyao (祿景曜), had conditionally sold his land to a Han Chinese, Fan Tianren (范添仁) in QL 37. Fan in turn leased the land to Han tenants, Huang Junshang (黃均尙), and two brothers, Deng Zhaohou (鄧兆後), and Deng Zhaolian (鄧兆連). In the winter of QL 42 Lu Jingyao redeemed the sale but since the field was already planted Lu agreed not to repossess the land until the next year. The field was adjacent to land owned by Yuezi and his father Xiage (夏格), who asked Lu Jingyao if they could lease his land. Lu told them that they could but that they had to wait until next year. “Unexpectedly, Yuezi was too impatient to wait (詎約自迫不及待).” Yuezi invited four other Yi men, Baoshou, Abei (阿備), Naizu (奈租), and Jiebie (結別) to accompany him to the field to dig an irrigation ditch, setting the stage for a deadly confrontation.

When the five Yi arrived at the field Deng Zhaolian yelled at them to leave. Baoshou picked up a rock and hit Deng in the left breast. Armed with a spear, Huang Junshang arrived to help Deng. When Yuezi pulled a knife on Deng Zhaolian, Huang lanced him with his spear. A struggle between Huang and Yuezi ensued during which both men dropped their weapons. The two men grappled and Yuezi would not let go of Huang’s queue. Huang picked up Yuezi’s knife and fatally stabbed Yuezi under the armpit. Meanwhile, Deng Zhaolian had been knocked off his feet after being struck by the rock thrown by Baoshou. Deng Zhaohou was at home and saw his brothers on the ground surrounded by several men. Desperate to help, Zhaohou loaded a firearm (砂子火藥線鎗) with shot and lit the fuse. Zhaohou claimed he only wanted to frighten the assailants<sup>32</sup> but the discharge struck and killed Baoshou leaving twenty-one wounds in his back. The shot also injured Apu in the neck. Zhu Junren (朱均仁), a Han Chinese neighbor of the Dengs heard the commotion and arrived armed with a wooden stick and drove Naizu and Jiebie off the land.

Unlike the previous cases there were no grounds for seeking a statutory pardon.

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from counties in Hunan, Guangdong, Jiangxi, Guizhou, Gansu, Guangxi, Hubei, Shaanxi, and Yunnan. Thomas Buoye, *Manslaughter, Markets, and Moral Economy*, p. 156.

<sup>31</sup> XKTB 3192, QL 44.7.7.

<sup>32</sup> Cases involving firearms were rare. In such cases killers invariably claimed they only wanted to scare the victim.



Nevertheless, the narrative was somewhat sympathetic to Deng Zhaohou. Deng's deposition stated that when he heard his elder brother calling to save his life so he went to his aid. According to his testimony it was only then that he got the firearm from their home. After he was armed Zhaohou saw that his brother was on the ground surrounded by the Yi men and he suddenly felt desperate and lit the fuse to fire a warning. The key element in this narrative was that Zhaohou was responding to his elder brother who was in imminent danger. Under Qing law if one killed while defending a parent or grandparent from a potentially fatal attack the sentence could be reduced to banishment. The criteria for this type of clemency were quite specific however and the most important one was to prove that the parent or grandparent was in imminent danger of losing his life. While there was no statutory pardon in the code for protecting an elder brother, the fact that Zhaohou acted to rescue a senior male relative might have had influence the autumn assizes sentencing review. Interestingly, all of the Han migrants were twice or more the age of the Yi victims. Yuezi was 23 sui and Baoshou was 22 sui. Hung Junshang was 46 sui and Deng Zhaohou was 53 sui. Based on what I have seen in other violent encounters over land, the "advanced" ages of the migrants might indicate that they were single men. Had there been sons or nephews nearby they likely would have joined the affray. In the end what caught the attention of the central government officials was the fact that Han migrants were tilling Yi land.

Since the Kangxi reign (1662-1722) central government officials had to balance the resettlement of Sichuan and the treatment of indigenous people. Early settlers received government support including seed, draught animals, tools, and food, but efforts to spur migration had the potential to spark unrest. Whereas Kangxi had favored "appeasement over high-handedness in pacifying and ruling the non-Han peoples in the southwest,"<sup>33</sup> Yongzheng and Qianlong aggressively extended Qing influence and initially promoted Han migration. Partly driven by natural disasters in their home areas, migrants continued to arrive even after government support ended and good quality arable land was increasingly in short supply. Settlers who arrived during the Qianlong reign were lucky to end up as tenants, while the less fortunate became vagrants. By 1768 officials in Sichuan proposed

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<sup>33</sup> See Dai Yingrong, *The Sichuan Frontier and Tibet: Imperial Strategy in the Early Qing*, p. 28.

an outright ban on new migration but Qianlong instead called for rigorous monitoring of new settlers and a crackdown on the burgeoning “floating population” who, many officials seemed to believe, were often engaged in illegal activities.<sup>34</sup> The killings of Baoshou and Yuezi occurred in 1777 (QL 42) after Sichuan had already witnessed a century of Han migration that was marked by two major uprisings in 1742 and 1771. If this case was any indication, Han-Yi competition for land remained a volatile issue. Clearly, ethnic conflict was on the minds of central government officials. Any judicial official with extensive experience reading capital case records would have immediately noticed several troubling signs in this confrontation. Land disputes were typically more protracted and some discussion or argument usually preceded violence. In this event as soon as the contingent of Yi men arrived on the scene the violent altercation erupted. There was no effort to mediate and the confrontation escalated into violence almost instantaneously. Finally, the use of weapons, particularly a firearm, under any circumstances, let alone inter-ethnic conflict, would immediately command the attention of superior officials.

The underlying worry over the broader issue of Han-Yi relations was readily apparent in the final decision. Most capital case records only addressed the specific legal issues in the case at hand but in this report went further. The adjudication of the criminal matters was upheld and Deng Zhaohou was imprisoned and sentenced to beheading awaiting final approval at the autumn assizes, and Huang Junshang was imprisoned and sentenced to strangulation awaiting final approval at the autumn assizes. Addressing the root cause of the violent clash, the Board of Punishments then ordered an investigation of Han renting Yi land (漢民租種夷田查明). If Han were found to be renting Yi land the land should be returned (飭令退業). Since this was a capital case record there is no way of knowing if this order was carried out and how much Yi land had been leased and cultivated by Han but it was clear that this violent event aroused serious attention at the central government level.

A third case involved Mao Zhaohe (毛兆合) a Chinese soldier stationed in Zhongzhou (忠州), Sichuan.<sup>35</sup> Mao was accosted by two Yi brothers, Abula (阿佈喇) and Acha (阿喳) who were local merchants. The brothers dunned Mao for money he owed for purchases

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<sup>34</sup> 劉原 (Liu Yuan), p. 44, 〈湖廣填四川與四川流民問題〉 (Huguang fills up Sichuan, and the problem of Sichuan's floating population), 《清史研究》 (*Qingshi yanjiu*) (1994), pp. 39-44.

<sup>35</sup> XKTB 0749, QL 15.9.19.

of rice and tobacco. Apparently, Mao and the Yi brothers had already agreed to settle the debt at a certain time in the future but on QL14.6.19, Mao was passing Acha's store when Acha's elder brother Abula tried to pull him into their store. Every official account and deposition noted that Abula was "wanton and violent" (肆行兇毆) and that Mao had noticed that Abula was also drunk. Mao tried to flee but Acha blocked him and bit his finger. Subsequently, Abula also joined in the affray. Mao pulled a small knife and cut Abula's left wrist and left ribs. Acha saw that his elder brother was injured and tried to wrest the knife from Mao. As the scuffle continued Mao became anxious and wanted to use the knife to frighten them but "by chance" (不期) he stabbed Acha who was rushing toward him. The knife penetrated his left breast and he collapsed and died.

Unlike the previous two case narratives, Mao, the Han assailant, was cast in more favorable light than Abula and Acha, his Yi antagonists. The case narrative depicted the Yi brothers as reckless instigators of the violent event. Mao was in arrears but he had already set a time to pay his debt. Attempting to avoid a confrontation Mao had first attempted to flee. The Yi brothers were clearly depicted as the instigators and aggressors. To make matters worse Abula who was known for his violent behavior was also drunk that day. Only in desperation did Mao wield his knife in self-defense and only then to frighten his assailants. Furthermore, the magistrate noted that the fatal wound occurred when Acha rushed Mao implying that the depth of the wound was due to the force of the victim running at the assailant. In his own testimony Mao maintained that Acha and Abula were drunk and "fierce" (凶猛) and that he was extremely anxious and pulled knife just to frighten them, unexpectedly Acha advanced on him fiercely and he "mistakenly stabbed" him (誤戳). Including all this information in the case narrative was undoubtedly designed to cast Mao in a sympathetic light and facilitate leniency at the autumn assizes.

Because Mao was in the military initial reports came from his sergeant and captain. The difference in reporting styles between military and civilian officials was telling. Interestingly, both of the reports from the military supervisors referred to Yi as *manmin* (蠻民) a pejorative for "uncivilized" minorities. Civil judicial officials on the other hand used the term Yi perhaps indicating their sensitivity to ethnic pride. Tensions between the civilian and military officials were also apparent when the Board of Punishments reprimanded the sergeant and captain for their lax monitoring of Mao after the crime. At

the risk of overanalyzing the point, different terms used for Yi and central government reprimand of the local military indicate a significant gap between grass roots officials and Beijing sensitivity to inter-ethnic conflict. In the end Mao was sentenced to strangulation and imprisoned awaiting final decision at the autumn assizes. Given the sympathetic case narrative Mao had a good chance for a reprieve at the autumn assizes.

The final case involved two Miao from Jiuxingsi (九姓司) in Luzhou (瀘州) prefecture, Sichuan. Huang Wu (黃五) killed Huang Dengchao (黃登朝), his grand nephew without mourning relations (無服姪孫).<sup>36</sup> The incident arose over a land dispute. Huang Dengchao wanted to take over the land that Huang Wu was renting because Dengchao's grandfather had originally reclaimed the land. Apparently, the local Miao chieftain, Ren Qilie (任啓烈), still had authority to mediate land disputes in this area. Huang Dengchao took his case to Ren Qilie who ruled in Dengchao's favor. The evidence proved that Dengchao's grandfather had reclaimed the land decades earlier and had obtained ownership. Subsequently, the land had been leased to Huang Wu who tilled and paid rent for decades. When Huang Wu claimed an ownership stake in the land, Ren Qilie, simply asked why he had paid rent for so many years if he owned the land. Huang Wu was likely embarrassed by the proceedings in which Ren Qilie made short order of his counterclaim. The stage was set for a violent encounter when Huang Wu came upon Dengchao tilling the field. Like many long term tenants who suffered eviction, Huang was outraged and referred to Dengchao's action as "seizing" his land.<sup>37</sup> Huang Wu demanded the land back and cursed Dengchao. A fistfight ensued and Dengchao threw the first punch. In "a moment of desperation" (一時情忿) Huang Wu punched Dengchao once in the chest near his heart and a second time in the ribs knocking Dengchao into the field. The blows were heavy and Dengchao died.

Unlike the cases examined above no Han Chinese were directly involved in the conflict. In the remote area of Sichuan the local Miao chief evidently played a primary role in mediating property disputes among the Miao people but capital crime was still under

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<sup>36</sup> XKTB 0737, QL 15.5.26.

<sup>37</sup> See Thomas Buoye "Litigation, Legitimacy, and Lethal Violence: Why County Courts Failed to Prevent Violent Disputes over Property in Eighteenth-Century China," in *Contract and Property in Early Modern China*, edited by Madeline Zelin, Jonathan Ocko and Robert Gardella (Stanford: Stanford University Press, 2004), pp. 94-119. Many long term tenants, who were not in arrears, considered an eviction illegitimate.

the jurisdiction of the Qing bureaucracy. The case narrative did not depict Huang Wu in a particularly negative light. Working against Huang Wu, the case record did mention that Huang Dengchao was the sole support of his grandmother, Ms Yang (楊氏). Most damningly, Ms. Yang's deposition accused Huang Wu of trying to take advantage of her young grandson and included this quote: "Pitiful me, my only grandson has been beaten death by him [Huang Wu]" (可憐小苗婦只有這一個孫兒被他打死). For his part Huang Wu, like many tenants undergoing eviction in the eighteenth century, expressed his frustration and moral outrage at losing his land but ultimately Huang did not shirk responsibility for his actions and he stated that he was "willing to pay with his life" (情願抵命) for his crime. Huang Wu was sentenced to strangulation and imprisoned awaiting a final decision at the autumn assizes. The final outcome of the case is unknown but given Huang's contrite admission of guilt and his seniority in relation to his victim he did have a good chance of avoiding the death penalty. Ethnicity does not appear to have played any role in the handling of the case. Even though the victim and the perpetrator were both Miao, there was nothing unusual about the manner in which the case was adjudicated.

As the four cases examined above reveal, legally the treatment afforded Han, Yi or Miao males in the adjudication of capital offenses, whether as perpetrators or victims, was fair and consistent despite the existence of laws that discriminated against indigenous peoples. As in countless other unpremeditated homicides, the local officials included information that might help obtain leniency during sentencing reviews the autumn assizes. While local officials seemed more inclined toward leniency than central government officials judicial officials at every level acted within the bounds of the law. Differences between military and civilian officials' attitudes toward ethnic minorities were discernable but it was clear that civilian officials in Beijing had the final say. In each case the law justified the sentencing and there was no discernable favoritism toward Han defendants. In fact, the treatment of indigenous people was even-handed if not slightly accommodating. Clearly, the central government was sensitive to ethnic politics but this concern did not override the law. While concern over Han-Minority conflict may have influenced the adjudication of capital crimes at the margins, the same cannot be said for women who were legally targeted for severe punishments under certain circumstances.

## Discrimination against Women in Qing Law

The Qing code had three sections on homicide (人命) comprised of nineteen laws (律). Individual laws addressed manslaughter, intentional, and premeditated homicide as well as accidental homicide, killing in horseplay, and striking the fatal blow in a group assault. The code also included several laws that defined a variety of very specific offenses, such as killing the parents of a deceased husband or injuring another with a bow and arrow. As many studies of Chinese law have noted, the relative status of victim and perpetrator was an important factor in determining fault. When a junior relative or woman killed a senior male the penalty was increased. Of greater interest than these nineteen laws were the statutes (例) that were amended to the code over the course of the Qing dynasty. Tracking the frequency and timing of statutes provides invaluable insights into the adjustment of the law to evolving social and economic realities. Numerous statutes added to several of the nineteen homicide laws were revealing. Of the one hundred and fifty-two statutes added to homicide laws one hundred and thirty-six were added to seven laws. Interestingly, the law with the greatest number of amendments was Killing the Adulterous Lover (殺死姦夫) with thirty-six. Most of these statutes were added during the Yongzheng and Qianlong reigns and many directly pertained to severe punishments that might befall women who were implicated in adultery and homicide.

The seriousness and complexity of the law on Killing the Adulterous Lover<sup>38</sup> was evident in one of the better-known and widely consulted compilations of legal cases, *Xingan huilan* (刑案匯覽) also known in English as *The Conspectus of Criminal Cases*. Cases in the *Xingan huilan* were organized according to the section headings of the Qing code, but the number of cases per law varied considerably.<sup>39</sup> Cases included were “commonly ones raising contradictory rulings, involving judgments by analogy, or representing reversals... of sentences proposed at the provincial level.”<sup>40</sup> Interestingly, more cases were

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<sup>38</sup> The law is number 285 in William C. Jones English translation. See William C. Jones, *The Great Qing Code* (New York: Oxford University Press, 1994). The law is translated as Killing a Wife's Paramour in Derek Bodde and Clarence Morris, *Law in Imperial China* (Philadelphia: University of Pennsylvania Press, 1967), p. 207.

<sup>39</sup> Derek Bodde and Clarence Morris, *Law in Imperial China*, p. 149.

<sup>40</sup> Derek Bodde and Clarence Morris, *Law in Imperial China*, p. 146.

included under Killing the Adulterous Lover than any other law despite the fact that the overwhelming majority of homicides were not related to adultery. Undoubtedly, the two circumstances that might mitigate the crime, the timing of the killing and the existence of prior knowledge or consent of the husband were difficult to determine and might explain why *Xingan huilan* included so many example cases. The fact that the law allowed individuals to exact private justice, albeit under very restricted condition was unusual under Chinese law. Additionally, the lurid nature of the crime and the threat it posed to patriarchal authority may also explain the heightened interest. Like other crimes, such as violation of tombs, assaults on senior relatives, and wrongdoers remaining home to care for parents, that directly impinged upon cherished elite values, adulterous murder was punished with the utmost severity. Clearly, the severe penalties meted out for these crimes were designed to terrify the populace as well as punish the offenders.

Adulterous murder notwithstanding, when women committed homicide, the law normally did not treat them differently than men. When everyday disputes tragically ended in fatal violence, the principle of seeking leniency appears to have been applied equally to men and women when the incident did not involve gender norms or a women's sexuality. For example, in QL 54.5.15 Ms. Huang (黃氏) of Xuwen County, (徐聞縣) Guangdong found herself tragically drawn into the middle of a land dispute.<sup>41</sup> Ms. Huang had leased a small parcel of land from Li Feng (黎奉) who had previously purchased the land from Li Yajiu (李亞九). Apparently, Yajiu had sold the land without informing his mother. When the mother discovered the sale she reprimanded Yajiu who then attempted to redeem the sale from Li Feng. Li Feng refused claiming the land had been sold as property (管業) and therefore was not redeemable. The impasse over the land set the stage for a violent confrontation. Yajiu went to the land and tore up a bamboo wattle (圍籬) that enclosed the plot. When Ms. Huang tried to stop him they argued and Yajiu grabbed her by her hair and tried to hit her. Ms. Huang got her hand inside his pants and squeezed his scrotum (抓傷腎囊). Yajiu fell to the ground. His injury was serious and he died nine days later from an infection.<sup>42</sup>

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<sup>41</sup> XKTB 3737 QL 56.4.22.

<sup>42</sup> Scrotum twisting was a common feature of female assaults and apparently was believed to be potentially fatal. In this case the autopsy reports that Li Yajiu had a serious infection in his scrotum. As painful as this type of assault would be, it is hard to imagine that scrotum twisting

The investigation revealed that Ms. Huang, aged 52 was alone in the world. Her husband had left the area and never returned ( 外出未回 ) and she had no sons. The report depicted Ms. Huang sympathetically and the facts of the case favored leniency. For example, Yajiu had attacked Ms. Huang and she spontaneously reacted in self-defense. She had injured Yajiu but the wound itself was not that serious and his death, which did not occur until nine days later, was attributed to an infection. Furthermore, Li Feng, who was blamed for creating the situation by refusing to redeem the sale, was punished under the law “doing what should not be done” ( 不應爲律 ). The conviction of Li Feng was important because it absolved Ms. Huang from any responsibility for provoking the altercation. Ms Huang appeared truly pitiful. Through no fault of her own, this childless fifty-two-year old woman who had been abandoned by her husband was threatened and attacked. Although she was imprisoned awaiting strangulation after final decision at the autumn assizes, the facts of the case and her personal circumstances boded well for leniency.

The case of Ms. Song ( 宋氏 ) of Yangxin County ( 陽信縣 ), Shandong was a far more complicated crime that challenged the norms of leniency.<sup>43</sup> Ms. Song had had a hard life. Facing famine in their home county of Yangxin in QL 12, Ms. Song and her first husband, Liu Taiping ( 劉太平 ) fled to Jiaozhou ( 膠州 ). Liu was blind and sang stories to earn a living but the couple never had enough to eat. After a month, “because they lacked food and clothing” ( 因衣食無資 ) Liu sold Ms. Song to Sun Shifu ( 孫世福 ) as a wife for 2000 copper cash. Sun took Ms. Song back to his home county of Jimo ( 即墨縣 ), Shandong. Sun “took short term work and struggled to make a living” ( 打短工掙錢度 ). They rented rooms in a home owned by the Yang ( 楊 ) family and Sun was away all day working.

The couple eked out a living until QL 12.12.13 when Ms. Song’s life took another tragic turn. That morning Ms. Song purchased three wheat cakes ( 火燒 ) from Li Zhu ( 李住 ) a twelve-year-old boy. She promised to pay him when her husband returned home. That afternoon Li Zhu arrived but Ms. Song told him her husband was still at work. Ms. Song procured three more wheat cakes and again promised to pay Li Zhu when her husband

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alone would be fatal. According to Alison Sau-Chau Yeung, 202 cases of adultery murder reported from 1875-78, 22 involved the wives twisting the husbands’ scrotums. See Alison Sau-Chu Yeung, “Female Criminality in Qing China,” p. 77.

<sup>43</sup> XKTb 0850 QL 17.6.25.



returned. Li Zhu remained with Ms. Song until darkness began to fall. Li Zhu became impatient and accused Ms. Song of cheating him. They argued and Li harshly cursed Ms. Song. Ms. Song struck Li Zhu with a sickle but he continued cursing so Ms. Song stuffed dirt in his mouth. According to Ms. Song's testimony, she feared that Li Zhu would tell his parents and that this would lead to Sun kicking her out. She was not "willing to be sent home" (絕不肯干修). The more she thought about it the more she thought it would be better to kill him. (頓起殺機) She then used the sickle to cut his throat. Ms. Song was frightened and she planned to wait until late at night to dispose of the corpse. Before she could do this Li Zhu's mother Ms. Teng (滕氏) came looking for her son. Seeing evidence of the struggle she questioned Ms. Song until they began to argue. The ruckus brought a neighbor with a lamp and it was not long before Li Zhu's corpse was found. When Sun Shifu returned home and discovered what has happened he struck his wife twice and berated her for dragging him into the mess.

Prior to the trial Ms. Song contracted a type of tubercular disease found in women (血癆病) in QL 13.5.8 and did not recover until QL 16.9.24. Due to Ms. Song's illness, the case was not resolved until QL 17.6.7 nearly four and a half years after the incident occurred in QL 12.12.13. The illness proved opportune. While Ms. Song was recuperating the Qianlong emperor issued a blanket imperial pardon in QL 15.8.4. Initially sentenced to beheading and imprisoned awaiting decision at the autumn assizes, the pardon coupled with a very sympathetic official narrative of the case saved Ms. Song's life. The official account noted that Li Zhu had "insulted her unbearably" (辱罵難堪). The case record also noted that the violence was not premeditated, she had acted alone and spontaneously, and that the crime was not included in the "ten abominations" (十惡) and therefore could be pardoned. As was the case in all imperial pardons, Ms. Song was required to pay the family of the victim 20 liang of silver though it would be hard to imagine how she would find that much silver. While Ms. Song's illness was fortuitous, the official reporting of the case was clearly disposed toward seeking leniency.

Serendipitously, this case report also revealed the vulnerability of impoverished women in eighteenth-century Shandong. As the events in Ms. Song's life story vividly reveal the conditions in which women, especially poor women, lived were deplorable. This case suggests that any husband could beat his wife with impunity and under extreme duress

men could sell their wives to escape poverty without great fear of prosecution. In this and other cases, the nonchalance with which the buying and selling of wives and the pimping of wives was reported suggests that while illegal these practices were not uncommon. For example, judicial officials did not punish either of Ms. Song's "husbands," Liu Taiping and Sun Shifu, for buying and selling a wife because they had both died before the case had been resolved, but the report does not explain why they were not punished sooner. In an effort perhaps to explain, though not condone the act, this case record, and others like it (see below), noted several times the pathetic circumstances under which the sale of Ms. Song took place. Wife-selling was unambiguously illegal but apparently, not rigorously prosecuted unless it came to light during the investigation of a more serious crime occurred. Furthermore, as Ms. Song's life demonstrated, when a wife was sold she had little say in the matter. On the other hand, if a married woman absconded and surreptitiously remarried, she could be sentenced to death by strangulation. Sadly, however, these practices were not the most egregious examples of gender discrimination in Qing criminal justice.

## Adulterous Wives

In the two cases considered above, women who killed were treated no differently than men were in hundreds of similar killings that originated in disputes over land or debt. While the general status of women was wretched, officials who adjudicated homicides did seek leniency for female offenders with one very notable exception, women who conspired with their lovers to kill their husbands. Unlike most other capital cases, official depictions of adulterous wives who conspired to kill their husband were designed to ensure the harshest punishment available. Furthermore, the adulterous wife was "typically" depicted as the instigator and initiator of the killing. Sadly, this was true for Ms. Zhou (周氏) who conspired with her lover, Yuan Ren (袁任) to kill her husband, Wen Shaolong (文紹隆).<sup>44</sup> Wen Shaolong had moved to Ms. Zhou's home province of Guizhou from Hubei. They married in QL 9 and later had a son, Gou'er (狗兒). The family moved to Lezhi County

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<sup>44</sup> XKTB 0948 QL 18,19,12.

(樂至縣) in Sichuan province and lived with Wen's younger brother, Wen Shaobang (文紹榜). It was difficult to eke out an existence, so in QL12.7 the family moved again to Hezhou (合州) to beg for food. In Hezhou, Zhang Xueyi (張學怡) allowed them to live in his empty storehouse. Later the wife of Zhang's neighbor Song Ruxian's (宋汝賢), Ms. Pu (蒲氏), who was from the same village (同鄉) in Guizhou as Ms. Zhou, took pity on them and gave the family some rice. Eventually, the family moved into Ms. Pu's home.

Until this point, the story of Wen Shaolong, Ms. Zhou, and their son was similar to many other narratives of downwardly mobile families in the eighteenth century. Fortunately, they had support from Wen's brother and from Ms. Pu, but, with the family in dire straits, Wen Shaolong let it be known to their host that he wanted to marry his wife off to obtain some silver to live on. Once again, this was an illegal but not uncommon strategy for the poor. Wen's erstwhile benefactor, Song Ruxian informed his neighbor, Yuan Ren (袁任) who was interested in marrying Ms. Zhou. Yuan Ren's cousin Pan Pinshan (潘品山), Zhang Xueyi, and others all warned Yuan that he must petition for permission from the local government, then and only then could Yuan marry Ms. Zhou. Wen Shaolong and others went together to the prefecture capital but the prefect was away on business. Without presenting the petition the group dispersed but the matter did not end there.

In the twelfth month Yuan Ren went to Song Ruxian's home to attend a puppet show. Ms Zhou saw him and was determined to marry him. Secretly, she took an earring (耳墜) and gave it to Ms. Pu to pass on to Yuan Ren as a remembrance. That night Ms. Zhou and Yuan Ren had "illicit" sex (私通). Yuan Ren promised to give Song Ruxian 8 ounces of silver if Song would act as a go-between and arrange a marriage with Ms. Zhou. Unfortunately, Wen Shaolong, who was unaware of the affair, had changed his mind and now was unwilling to sell his wife.

Matters came to a head in the QL.13.1.19 when Wen decided to move his family to the capital of Lezhi County. Song Ruxian secretly communicated with Ms. Zhou and instructed her that he would tell Yuan Ren to follow at a safe distance behind her. Song suggests that when Ms. Zhou reached an inn along the way should abscond and meet up with Yuan. At the same time, Song Ruxian instructed his nephews Cai Chen (蔡臣) and Song Wenhui (宋文輝) to catch up and travel with Wen and his family. Meanwhile Yuan Ren and Song Ruxian's son, Song Wenbing (宋文炳), would trail the group waiting for Ms. Zhou to flee with her

son. After departing with her husband Ms. Zhou worried that it would be difficult to escape because her husband would not easily give up his son. She “suddenly came up with the idea”<sup>45</sup> (頓起殺機) to kill her husband and surreptitiously told Song Wenhui to have Yuan Ren buy poison. Because there was nowhere to buy poison, Yuan Ren suggested that Ms. Zhou wait until they arrived at a convenient place along the route and then twist Wen Shaolong’s “privates” (下陰捻住) to kill him.<sup>46</sup> The two agreed to follow this plan.

On the 26<sup>th</sup> Yuan Ren asked Song Wenbing to proceed with him to an abandoned temple in Longshengkou (龍升口), Tongliang County (銅梁縣) and wait there for the others who would arrive that evening. When Yuan informed Song Wenbing of the details of his plot, Song Wenbing made every effort to dissuade Yuan to no avail. It was not yet night, when Cai Chen and Song Wenhui and Wen Shaolong and his family arrived and camped out below a tree. At the second watch Ms. Zhou twisted Wen Shaolong’s testicles. Wen Shaolong cried out but Cai Chen used a cloth handkerchief to gag him. Cai Chen and Yuan Ren attacked Wen pinning him down and beating him with their fists and a piece of firewood. Eventually, they killed Wen and dumped his corpse on an uncultivated hillside. For their help Yuan Ren paid Cai Chen four ounces (兩) of silver, Song Wenhui received three ounces and Song Ruxian got eight ounces. Yuan Ren and Ms. Zhou considered themselves husband and wife and they took Gouer and secretly went to live in Nanchong County (南充). The couple and their accomplices got away with the crime for more than three years. It was not until QL 16.8.16 when the victim’s younger brother Wen Shaobang successfully lodged a complaint after some of Wen Shaolong’s remains were discovered. After an extensive investigation involving officials from multiple jurisdictions and a fascinating analysis of the partial remains of the hapless Wen Shaolong, the case was finally resolved. In the end, the Board of Punishments approved the sentence of lingering death for Ms. Zhou and immediate decapitation for Yuan Ren. Yuan Ren was sentenced to

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<sup>45</sup> Standard phrase used in legal documents. It signals to the officials judging the case that this was the first instance that anyone contemplated killing. In effect, it absolves Song Ruxian from complicity in the murder.

<sup>46</sup> In this case it is clear that the assailants believe that scrotum twisting could be fatal. Unlike the case of Ms. Huang killing Li Yajiu, however, Wen Shaolong faced multiple assailants and his death was not attributed to scrotum twisting. Wen’s autopsy revealed lethal wounds on the skull and the throat.

“immediate” decapitation for engaging in illicit sex, premeditated killing, and afterwards absconding with the seduced wife of another as his own wife. The accessories to the crime, Song Wenhui, Song Ruxian, and Song Wenbing were all punished individually for their participation in the crime. Only Cai Chen remained at large and unpunished.

Ms. Zhou had obviously been party to a serious crime and nothing in the report was meant to mitigate her punishment. Keeping in mind that judicial officials composed and edited all depositions, in her final testimony recorded on QL 17.4.20, Ms. Zhou related the details of her family’s descent into poverty and her husband’s initial desire to sell her to Yuan Ren. Recounting her first encounter with Yuan Ren at the puppet show Ms. Zhou acknowledged unapologetically that “I wholeheartedly wanted to marry him” (一心要嫁). Ms. Zhou also admitted that she agreed to Song Ruxian’s initial plan to lose Wen Shaolong on the road and abscond with Yuan Ren. Realizing that Wen Shaolong would pursue her if she tried to run off with their son, Ms. Zhou also confessed that she came up with the idea of killing her husband and asked Yuan Ren to buy poison. When she was informed that there was nowhere to purchase poison she agreed with Yuan Ren’s suggestion that she wait until they reached a secluded place and then she would twist Wen Shaolong’s privates. In her own testimony Ms. Zhou noted that the conspirators decided that everyone would help in the assault but she also described her leading role in initiating the attack on her husband. There was also no doubt that Cai Chen and Yuan Ren finished Wen off but Ms. Zhou was depicted as instigator of the plot to kill and initiator of the violence.

The conspiracy to kill Wen Shaolong was an exceptional crime that produced a lengthy case record. The report contained several official summaries and multiple depositions but nowhere can one find a comment that might have garnered sympathy for Ms. Zhou. While there were five men, including Yuan Ren, involved in plotting and assaulting the victim, the narrative clearly placed Ms. Zhou at the center of the killing. The official summary of events identified Ms. Zhou as originating the conspiracy to kill and leading the fatal attack on her husband. Despite the fact that Cai Chen and Yuan Ren administered the fatal blows Ms. Zhou received the most severe punishment. While Yuan Ren was sentenced to immediate beheading, Ms. Zhou received the ultimate punishment of lingering death. In group assaults that ended in death, magistrates were normally required to determine who struck the fatal blow and to punish that individual most severely. In this case it clearly was

Ms. Zhou's status as an adulterous wife, not the severity the injuries she inflicted on her husband, that sealed her fate.

The case of Ms. Ye (葉氏) and her lover Gong Kairong (龔開榮), who together ambushed and killed Ms. Ye's husband, Chen Xuesheng (陳學升) on QL 43.12.17 in Jiangbei Subprefecture (江北廳) took place almost three decades after the conspiracy to kill Wen Shaolong.<sup>47</sup> One obvious difference in the two reports was the streamlining of the case record. The protracted investigation of Wen Shaolong's murder was replete with official summaries, depositions and forensic reports and ran to over eight thousand characters. Three decades later reports had become more terse producing more concise narratives that placed the key elements of the crime and the role of the adulteress wife in sharp relief. Although Ms. Ye's case was less complicated there was very little exposition or background information and the entire report was less than two thousand characters long. Eyewitness testimony began with the neighbor, Ms. Li (李氏), who reported that when she went to Chen Xuesheng's home to borrow some rice she saw Gong Kairong in Ms. Ye's room. Ms. Ye gave her some rice and she requested that she not mention what she had seen to anyone else. Ms. Li returned home and told her husband Bin Wenxi (賓文喜). Ms. Li's testimony quickly established the fact Ms. Ye and Gong Kairong had reason to plot because they feared (with good reason given Ms. Li's loose lips) that their affair might be exposed soon.

Gong Kairong's deposition immediately followed Ms. Li's statement. Gong Kairong testified that he and his brother had opened a "distillery" (酒房) in Chongqing. Gong admitted that he knew Ms. Ye well and often had contact with her. One day in QL 43.3, he saw Ms. Ye alone on the mountainside gathering firewood. Gong "propositioned her" (調戲) and they "had fornicated" (成姦). Afterward they had sex together many times during a period of eight months (後來乘便姦過多次). "Her father-in-law and her husband was unaware of the affair." (他公公丈夫都不知道) On QL 43.11.29 Gong needed cash and Ms. Ye gave him 20 ounces of silver. (Unlike the three previous cases Ms. Ye appears to have been better off economically.) When Chen Xuesheng returned home, he asked Ms. Ye about the missing money. (Gong feared their affair would be revealed so he hid the money.) Gong also related the incident of QL 43.12.12 when Ms. Li saw him in Ms. Ye's room.

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<sup>47</sup> XKTB 3225 QL 45.2.16.

According to Gong, Ms. Ye said that if her husband discovered their affair she would be “divorced” ( 干休 ). Ms. Ye then proposed the idea of killing her husband. Once again the official narrative presents the adulterous wife as the instigator of the crime. Together they planned to ambush Chen Xuesheng when he returned from the market on the night of the seventeenth. Ms. Ye stood lookout, and Gong waylaid Chen with a wooden club. Gong dragged Chen into the field and he handed a knife to Ms. Ye, who stabbed Chen repeatedly. Most importantly, Gong’s testimony succinctly established that Ms. Ye initiated the plan to kill her husband and that she had inflicted the fatal wounds.

Up until this point the case report did not include a deposition for Ms. Ye. Instead there was a brief statement that her testimony agreed with Gong’s with regard to their affair and the killing. The entire case report was abbreviated and contained absolutely no contradictory evidence. While it is true that no one witnessed the crime, it is hard to imagine that Ms. Ye and Gong Kairong both confessed immediately and that their confessions were without the slightest disagreement. The tone of the report was matter-of-fact and less emotionally charged than earlier case records. The document reads as concise and cogent indictment of Ms. Ye and her lover.

Interestingly, Ms. Ye’s deposition was only included in the second round of testimony. She began her testimony by noting that her husband and Gong Kairong were acquainted. In almost every detail her testimony matched Gong’s. Confirming her perfidy as an adulteress, she stated that after the initial liaison with Gong, “they slept together whenever it was convenient and she could not recall how many times” ( 後來乘便姦宿記不得次數 ). This statement succinctly established her moral turpitude. Her testimony also noted that her husband did not know. Her husband’s ignorance of the affair meant that lingering death was a certainty. She also recalled that when her husband discovered the money missing she lied and told him it was stolen. She noted that her husband was suspicious and that he cursed her. After Ms. Li saw the couple together, Ms. Ye reported she was fearful because others had seen through them ( 看破 ) that if her husband heard she would not be “able to live” ( 聞知就活不成了 ). (This testimony established her motive.) Ms. Ye stated that she then began to plot the murder of her husband with Gong Kairong. Ms. Ye repeated the details of the plot and the attack with one important difference. Suspiciously, her account of the killing specifically mentioned the location of each and every stab wound in exactly the

same words as the coroner's report. In conclusion, Ms. Ye accepted her guilt for the affair and the killing. The case narrative depicted Ms. Ye as a wanton woman who cheated on her husband, stole his money, and remorselessly plotted his death. After her lover waylaid him, Ms. Ye stabbed him five times in the chest and stomach. The case record included nothing remotely sympathetic to Ms. Ye and, not surprisingly, the emperor approved the sentence of immediate "lingering death", the most horrific form of capital punishment, while Gong Kairong was sentenced to the lesser punishment of imprisonment awaiting decapitation after consideration at the Autumn Assizes. Gong still had a remote possibility of obtaining a reprieve.

The comparison of these two cases of adulterous wives reveals both consistency and change over time in the adjudication and reporting of capital crimes. The 1779 case report of Ms. Ye and Gong Kairong contained only one version of their depositions. Similarly, the magistrate included only barebones testimony necessary to establish the elements and plausibility of the crime. Unlike the multiple depositions presented in Ms. Zhou's case record, there was nothing but essential information presented. For example, the effort to "sell" Ms. Zhou and the events that transpired on the road were retold several times and from several different perspectives in the case record. On the other hand, in this case the only extensive testimony from anyone other than Ms. Ye and Gong Kairong was that of Ms. Li whose testimony confirmed the affair and revealed the motive for killing Chen Xuesheng after the eight-month affair. The language of each deposition in the 1779 report also was remarkably uniform in content and style. Perhaps the best example was Ms. Ye's account of the stabbing. Implausibly her account matches verbatim the coroner's report of the location of each wound. It seems highly unlikely that Ms. Ye would recall the location of each wound so precisely or that she would use exactly the same anatomical terms as the coroner when naming the wounds. We must assume that the magistrate who had ultimate responsibility for the composition of the report had "edited" Ms. Ye's oral testimony for the sake of consistency. For Ms. Ye, the result was a concise and damning report that ensured a sentence of lingering death.



## Conclusion

Homicides involving women or ethnic minorities were not common, but as the qualitative analysis demonstrates, gender and ethnicity were relevant to criminal justice. Persistent concerns about Han migration in Sichuan informed the thinking of central government officials who were particularly sensitive to inter-ethnic conflict. Generally, local magistrates were evenhanded in their construction of case narratives in incidents involving Han and Yi and, as was the norm in most reports, they included information that might facilitate leniency for Han as well as Yi violators. Ethnicity did not appear to have a strong influence on the decisions of these magistrates. Central government officials, as was the norm, were stricter in their interpretations of the law. For example, the Board of Punishment turned down a seemingly reasonable request for a statutory pardon for Yu Tengwen, the Han horse seller who killed Paizi, the Yi neighbor of his customer. The judgment from the Board was based solely on a more stringent interpretation of the legal criteria for a pardon and did not mention ethnicity. On the other hand, although the Board rejected a statutory pardon, Yu Tengwen still had an opportunity to obtain mercy because it was likely that his sentence would be reduced to banishment at the autumn assizes. In this case, leniency was probably deferred not denied. Interestingly, the difference between a pardon and leniency at the autumn assizes was significant from the standpoint of keeping ethnic conflict from escalating. If he had been granted an imperial pardon, Yu would have returned to the community to care for his father, thus creating the potential for retributive violence. If Yu received leniency at the autumn assizes, he would be banished from his home community, thus eliminating the opportunity for revenge. Similarly, the armed confrontation in Ningyuan County between Han migrants and local Yi farmers alarmed central government officials. Armed confrontations always drew greater scrutiny from Beijing, but on the volatile Sichuan frontier the incident prompted an order to investigate Han encroachment on Yi lands. Politically, both of these incidents aroused concern at the highest level of government, but legally there was nothing exceptional about how these cases were decided. Each legal decision was made in accord with the relevant law.

Gender was an entirely different matter. When women were involved in “common” incidents of manslaughter, their gender was not a significant factor. The local magistrates

depicted both Ms. Huang and Ms. Song sympathetically in the respective narratives of their crimes. Official reports presented Ms. Huang as a childless woman who had been abandoned by her husband. Ms. Huang had acted in self-defense after being unjustly attacked and was obviously a strong candidate for mercy at the autumn assizes. Likewise, all reports represented Ms. Song as a pitiable figure. After her trial was delayed for years due to illness, local magistrate did not hesitate to recommend her for clemency under a blanket imperial pardon that was issued during her convalescence. In both cases the women were indisputably guilty but their treatment was no different from that afforded men in like circumstances. Gender does not appear to have been a factor in “routine” capital crimes.

While a propensity for leniency in most homicides was apparent in the evenhanded treatment of ethnic minorities and women who were convicted of homicides we cannot ignore the darker side of the Qing legal system. Ideologically, the Qing legal system was rooted in Confucian-inspired notions of patriarchal benevolence, filial piety, and social hierarchy. So saying, inequality was written into the law code. Under Qing law the determination of fault and causation required a thorough reporting of the relevant circumstances of the crime. An important criterion was a clear delineation of the relative status of victims and perpetrators and other principals involved. The latter was critically important in determining the severity and punishment of the crime. Fault in Chinese law could be understood in terms of intention to kill, the cruelty of the act, or whether the act was due to careless or reckless actions but it could also be understood as a “failure to observe the behavior demanded by a particular status, that is, by the kin relationship in which the offender stood to the victim.”<sup>48</sup> Legally, this concept of fault was used to justify the harshest penalty available for the adulterous wife. Nothing could be farther from the behavior demanded of a wife, than conspiring with a paramour to murder her husband. Ostensibly based on a benevolent patriarchal hierarchy, Chinese law discriminated against women in numerous ways 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 but it was entirely legal under Qing law.

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<sup>48</sup> Geoffrey MacCormack, ‘Cause, Status and Fault in the Traditional Chinese Law of Homicide,’ in *Critical Studies in Ancient Law, Comparative Law and Legal History*, eds. John W. Cairns, O. F. Robinson, and Alan Watson (Portland, Or: Hart Publishing, 2001), pp. 173-82.

Given the general tendency toward leniency and the normal dilatoriness in the application of capital punishment the pitilessness of the punishment and the swiftness with which it was applied speak to the fear and loathing of the patriarchal elite. Outside of rebellion and treason, few crimes were dealt with great cruelty and celerity. Summary executions that bypassed the normal judicial review (王命) were rare during the eighteenth century and usually reserved for rebellion and piracy. The Qing court had no tolerance for criminal activities that directly threaten the dynasty, but even these serious crimes did not automatically result in lingering death. Adulteress wives conspiring to kill their husbands would not topple the government but the crime did have an enormous psychological impact. Women convicted of this crime were invariably sentenced to the cruelest form of capital punishment: lingering death. Quite often their male co-conspirators were sentenced to the “lesser” punishment of decapitation though some were imprisoned awaiting the final sentencing at the autumn assizes and thus had a chance for a reprieve. As always the circumstances of the crime and relative status were pivotal. In principle and in practice the Qing criminal justice did apply capital punishment cautiously, but the infamous penalty of lingering death was always available for those crimes deemed flagitious, seditious, or depraved. Unfortunately for women, the most terrifying penalty available under Qing law was also reserved for a woman who conspired with her lover to kill her unsuspecting cuckolded husband. The use of lingering death, which entailed flaying, dismemberment, and decapitation, was clearly meant to terrify all women. Ideally, a sense of social responsibility tempered power and privilege, but with no formal checks on criminal justice and ultimate authority concentrated in the hands of the emperor excessiveness quickly replaced evenhandedness when the crime struck at the heart of patriarchal authority.

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## **Appendix**

Location	Date of Homicide	Type of case
Xichang (西昌縣) Sichuan	QL16.10.9	Inter-ethnic, Han-Yi
Ningyuan (寧遠縣) Sichuan	QL 43.3.22	Inter-ethnic, Han-Yi
Zhongzhou (忠州) Sichuan	QL14.6.19	Inter-ethnic, Han-Yi
Jiuxingsi (九姓司) Sichuan	QL 14.4.26	Intra-ethnic Miao
Xuwen (徐聞縣) Guangdong	QL 54.5.15	Female killer
Yangxin (陽信縣), Shandong	QL 12.12.13	Female killer
Hezhou (合州) Sichuan	QL 13.1.26	Adulterous wife
Jiangbei (江北廳) Sichuan	QL 43.12.17	Adulterous wife

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