

THE SPEED OF JUSTICE: SUMMARY EXECUTION AND LEGAL
CULTURE IN QING DYNASTY CHINA, 1644-1912

by

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A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

in

THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES
(Asian Studies)

THE UNIVERSITY OF BRITISH COLUMBIA
(Vancouver)

June 2016

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Abstract

This dissertation examines the history of summary execution in the Qing dynasty (1644-1912) and its significant impact upon Chinese politics and legal culture. The practice of this extraordinary punishment initially increased in the eighteenth century, when the Qing Empire encountered the challenges of a growing population, an overburdened judicial system, and an increased number of popular protests. The Qianlong emperor (1711-1799) extensively used expedient procedures and bestowed upon regional authorities the power of summary execution to battle the threats from both borderland and inland—including the emerging underclass and the protesters. However, the problems remained unresolved and the court continued to institutionalize this informal punishment. In the nineteenth century, the increasing social turmoil and continuously overwhelmed judicial system led to several reforms at the regional level. Following the trend of local militarization, the spread of men using force became an inevitable trend. The authorities continued to rely on braves in order to quench local revolts and save government expenditures. Yet this approach blurred the boundary between legality and illegality and forced the authorities to severely punish soldiers and unorganized “roaming braves” (*youyong* 游勇) through the informal procedure of summary execution.

Although the practice of summary execution helped the authorities to overcome the lack of judicial resources and suppress the threats in an efficient manner, it also evaded central authority over death penalty and enhanced political intervention in the judicial process. The extensive use of this punishment created

a space for not only the state but also regional authorities and local forces to manipulate judicial expediency and the death penalty. It also led to the rise of what I call the “economy of punishment”—the spread and distribution of penal resources related to crime and violence. This trend shifted the practice of Chinese death penalty toward a system where routinized and exceptional, centralized and decentralized, and formal and informal forces consistently negotiated judicial expediency and mutually shaped one another. More importantly, it reveals that a series of significant reforms predated the Westernization of law and continued to influence Chinese criminal justice during the first half of the twentieth century.

Preface

This dissertation is original, unpublished, independent work by the author, Weiting Guo.

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Acknowledgements

This dissertation could not have been accomplished without the constant support of numerous people. First, I would like to express particular thanks to my thesis advisor, Professor Josephine Chiu-Duke. Ever since I entered UBC, she has offered unstinting support to my study and motivated me to pursue quality research. She trained me in the field of Chinese political thoughts and extended my knowledge about Ming-Qing laws and Tang-Song history. She gave me sufficient freedom in choosing research topics, while also reminding me of significant issues and providing me valuable critiques and suggestions. I am also grateful for the guidance and inspirations from my secondary advisor, Professor Leo Shin, and my dissertation committee member, Professor Timothy Cheek. Professor Shin not only cultivated my interest in late imperial Chinese history but also guided me in historiographical thinking. He extended my study to various fields of Ming-Qing society. He nourished my ability of framing meaningful arguments and always gave me warm support during my research. Professor Cheek showed me how a wise historian approaches the study of history. His interesting courses and intelligent discussions enriched my knowledge about modern Chinese intellectual history and provided me useful tools for analyzing culture, ideas, and historical figures. His perceptive inquiries during my oral defense, particularly about culture vs. context and the social production of the dangerous class, greatly benefit my dissertation and future projects. What is more important is that—and I think no one could ever doubt it—his sense of humor and quick-witted conversation made my long journey toward the PhD quite enjoyable.

I am also grateful to my examiners for their helpful comments and warm encouragement. Professor Kent Guy, who came all the way from Seattle to UBC, provided me invaluable suggestions particularly regarding eighteenth-century history and the Qianlong emperor's policies. His detailed review and insightful remarks reminded me of several important aspects of the Qing empire. He also warmly encouraged me to go further in my research and revise the manuscript for publication. Professor Timothy Brook, who has inspired me in so many fields and encouraged me at different stages, carefully read my dissertation and provided me very constructive criticism. His thought-provoking comments have helped me reflect on *how* and *why* certain practices and ideas were framed and reproduced while multiple forces competed with one another and jointly contributed to the historical process. I am grateful that many of his questions have led me to this stage and will now guide me through my future career with a fresh and innovative perspective. Professor Francesca Harlow generously provided insights from outside the field of China studies. Her reminder about the fundamental structure and the driving forces behind the persecution of the underclass through her study of nineteenth-century India not only offered me a great direction for future revision but also broadened my horizon to histories outside China.

My debt of gratitude is also owed to many teachers and colleagues I met in the course. I particularly want to thank Professor Li Chen for his countless support and assistance to my study. During my study at the University of Toronto, Professor Chen generously reviewed my dissertation proposal and provided valuable suggestions which later became part of my central questions in the

current research. He introduced me to the International Society for Chinese Law and History (ISCLH) where I formed great connections and friendships among colleagues. I am grateful to him and Professor Madeleine Zelin for organizing the Chinese legal history workshop at Columbia University that has brought so many inspirations to me and many colleagues. Professor Madeleine Zelin kindly supported my research on grave disputes in Qing dynasty Taiwan. She carefully reviewed my article and generously provided insightful feedback that influenced not only my previous work but also my future projects. I also want to thank Professor Thomas Buoye, whose paper on lingering imprisonment inspired me to go forward with the research on the history of summary execution in Qing dynasty China. Professor Buoye kindly offered valuable critiques to my article on the punishment of roaming braves. Many of his fresh ideas have carried me to a longer inquiry into the legal order in Chinese society. Professor Yiching Wu and Tong Lam both provided support and helpful suggestions to my research during my exchange program at University of Toronto.

During my PhD program, I was fortunate to join a collaborative project on the local history of Wenzhou. The project was coordinated by Fudan University under the supervision of Professor Wu Songdi. Part of its research outcome has been published in my article on late Qing and early Republican mediation practice. The rich sources I collected in Wenzhou archives and library has formed the basis of my second book project. I especially want to thank Roger Shih-Chieh Lo, who is now teaching at National Taiwan University, for introducing me to the world of Wenzhou studies. I still remember how fruitful the journey was when I first met

Roger at Brown University and later on in a short trip to Harvard Yenching Library. Roger's enthusiasm in local history and insightful perspectives toward the study of modern China has greatly inspired me and many colleagues. I'd also like to thank Professors Wu Songdi, Li Shizhong, and Hong Zhenning for their numerous assistance to my research. I particularly thank the staff and research fellows at Wenzhou Municipal Library, Wang Yan, Mao Weijie, Lu Liyang, and Pan Mongbu, for their constant help to my source collection.

At UBC, the continued support from my teachers and friends has become one of my most valuable assets. I was lucky to have met many good teachers such as Professors Alison Bailey, Catherine Swatek, Christopher Rea, Donald Baker, and Harjot Oberoi. I am also grateful for receiving generous assistance from our Graduate Advisors, Professors Sharalyn Orbaugh and Bruce Rusk, our department's head, Professor Ross King, and staff, Jasmina Miodragovic, Maija Norman, and Stephanie Lee. I'd like to thank Professor Michael S. Duke, who, like Professor Josephine Chiu-Duke, has always treated me like family and showed warm concern about my research. I particularly want to thank my friends for the joy they bring to my life and their encouragement to my study: Dominic Meng-Hsuan Yang, Karl Wu, Junrong Du, Meng Ying, Maria Grazia Petrucci, Chelsea Wang, Dewei Zhang, Yang Zeng, Yu Zhansui, Clayton Ashton, Dai Lianbin, Robban Toleno, David Luesink, Jonathan Henshaw, Craig Smith, Szu-yun Hsu, Gideon Fujiwara, and Feng Nianhua. I also want to thank the UBC Asian Library staff for their help in source collection: Jing Liu, Phoebe Chow, Shaun Wang, and Eleanor Yuen.

I am fortunate enough to have met many good friends who gave me warm support throughout the long journey. At the International Society for Chinese Law and History, I met a number of friends who share similar interest in Chinese legal history: Taisu Zhang, Philip Thai, Ting Zhang, Maura Dykstra, Dandan Chen, Tristan Brown, Daniel Asen, and Weiwei Luo. At the North American Taiwan Studies Association (NATSA), I got to know many colleagues who work in the field of Taiwan studies: Feng-en Tu, Chi-ting Peng, Chienyuan Chen, Laura Johanna Wen, Cheng-Pang Lee, Eric Siu-kei Cheng, Feng-yi Chu, Wanjuan Wang, Yang-Yi Kuo, Shi-Shang Sung, and Chih-Ming Liang. In Taiwan and Hong Kong, many teachers and friends provided assistance to my research: Professor Taysheng Wang, Professor Pengsheng Chiu, Wen-liang Tseng, Wei-chieh Tsai, Ren-Yuan Li, I-Chao Wang, Chih-Hsing Ho, and Yunru Chen. Friends in Shanghai and Hangzhou, especially Song Hong, Tang Xiaobing, Hu Yuehan, and Li Youqiang, not only enriched my trip to China but also offered mental support and research help. I also thank Cameron Duder for his careful proofreading and thoughtful concerns over our life and many things.

Many institutes have generously helped my research in the past few years. I'd like to thank the Social Sciences and Humanities Research Council (SSHRC) of Canada, the Chiang Ching-kuo Foundation, and Harvard Yenching Library for funding my dissertation writing and source collection. I particularly appreciate the warm encouragement and suggestions from Professors Scott Simon and André Laliberté during the reception of the Chiang Ching-kuo Foundation award. I also

want to thank the staff at the Cheng Yu Tung Library of University of Toronto, especially Vera Cheng and Paul Lin, for their kind help during my stay in Toronto.

Finally, but not least, I want to thank my family. My parents, Rong-ell Guo and Sumin Chen, and my parents-in-law, Zhu Mingruo and Yu Xiao'ou, have given their love and support to a man who dedicates so many years to the pursuit of knowledge. I especially acknowledge my mother-in-law, Yu Xiao'ou, for helping me collect sources and driving me to the villages during my field trips. My wife, Daisy Yidan Zhu, has kept me company over the ups and downs throughout the long journey of completing my PhD. My son, Wilson, brings me plenty of joy not only because of his painting of cars but also because of his lovely words and big hugs. I really thank my family and every individual who has helped me in my life. Without their encouragement and patience, it would have been impossible for me to reach this stage and complete this dissertation.

W.T.G.

Coquitlam, BC

Introduction

On September 9, 1903, the Shanyin County (山陰縣) of Shaoxing Prefecture had an unpeaceful Double Ninth Festival (*Chongyang* 重陽). A group of robbers broke into a wealthy family's house late in the night.¹ Most of the valuables were stolen. A servant was stabbed during the robbery. The second day, the victim reported the case to County Magistrate Zhao Youzhi (趙佑之). Zhao quickly sent his runners to search for the suspects. Very soon, two robbers were arrested and identified as “roaming braves” (*youyong* 游勇). The magistrate then reported the case to a superior official, who commanded him to punish the convicts severely following the established statutes (*zhaoli yanban* 照例嚴辦).² On October 12, the magistrate met with the county's military officer and led a troop of soldiers to bind the two convicts with a rope and send them to the execution ground. The two robbers were beheaded at the Xianting Entrance (*Xiantingkou* 顯亭口). Their severed heads were then hung at the district where the offence occurred in order to deter the public.

No records indicated the names of these two robbers. People at the county government might have known more information, but these two robbers—like many other roaming braves—left no names or personal profiles after execution. As the title suggests, roaming brave meant a wanderer who had previously served in the military.

¹ The story of this case is from a *Shen Bao* report. See *Shen Bao* (申報; *Shanghai News*) 11008, December 10, 1903, 2.

² According to *Shen Bao*, the magistrate only reported the case to “shangxian” (上憲), which, in theory, could be any supervising officer higher than the county level. However, the context of this case seems to suggest that the case was reported to the prefect.

This group became the target of suppression after the Qing court disbanded hundreds of thousands of military braves following the defeat of the Taiping rebels. The procedure adopted here was not a regular one. It was usually called “execution on the spot” (*jiudi zhengfa* 就地正法), meaning that the offenders could be summarily executed at a place convenient to regional authorities. During the Taiping Rebellion, local officials and militia were bestowed with extensive powers of summary execution. The scope of this exceptional penalty was slightly restricted after the war, but the Qing court continued to allow regional authorities to execute several types of offenders without completing the judicial review process. By the end of Qing dynasty, the primary categories of those targeted for summary execution included “local bandits” (*tufei* 土匪) and “thieves on horseback” (*mazei* 馬賊), “roaming braves,” and “sect bandits” (*huifei* 會匪).³ Through the legislation of special laws, the Qing court bestowed on regional officials its ultimate power of taking life at the cost of loosening imperial control.

Before the epidemic of summary executions, the mandatory procedure for reviewing death sentences was to send capital cases from local authorities all the way to the central government. The county magistrate usually conducted the first round of investigation. After the initial adjudication, the capital cases were supposed to be sent to the prefect, circuit intendant (*daoyuan* 道員 or *daotai* 道台), surveillance commissioner (*anchashisi* 按察使司), governor, governor-general, and then the Board of Punishment.

Cases sentenced to suspended execution (*jianhou* 監候) were sent to the annual Autumn

³ These four categories were stipulated in the Summary Execution Guideline of 1882. See Kun Gang 崑岡 et al., *Da Qing huidian shili* 大清會典事例 (The Precedents of the Collected Statutes of the Great Qing) (Beijing: Zhonghua shuju: 1991), Xingbu, juan 850, Guangxu 8 nian, vol. 9, 1232b–1233a.

Assizes (*qiushen* 秋審). This procedure usually took years, and in many cases the penalty was converted to a lighter one. In imminent-execution (*lijue* 立決; or “execution without delay”) cases,⁴ offenders were supposed to be executed right after the adjudication at the central level, yet such speedy punishment still took up to two to three years to complete under the review process.

The case at Shanyin certainly did not follow these procedures. It took only one month to complete the entire process. The Board of Punishment had no chance to hear about this robbery. Local officials probably even avoided sending the case to the governor or other provincial-level authorities. Despite all these rough and somehow arbitrary procedures, no one seemed to care and dispute the judgment. Local people might not have known where these criminals were from. They had long heard about vicious “roaming braves.” In their eyes, these wanderers acted like demons and should be executed in the most severe way.

Partly because of the simplified procedure, only a few records remain regarding those summarily executed during the nineteenth century. The death penalty in the centralized Qing legal system was regularly scrutinized in a sophisticated way. The majority of capital cases were closely analyzed in accordance with the established precedents. These records were primarily stored in the Conspectus of Penal Cases

⁴ Here, I translate *lijue* as “imminent execution” in order to distinguish it from *jixing zhengfa* (即行正法), which, in this dissertation, is translated as “immediate execution.” In actual practice, *jixing zhengfa* was used to deal with cases that were more urgent than *lijue* cases. The latter was required to go through the regular review procedure, while the former could be conducted through the secret memorial system. The Yongzheng emperor was one of the earliest emperors who stated that immediate execution (*jixing zhengfa*) was a specific category of death penalty that should be considered more severe than imminent execution (*lijue*). See *Qing shilu*, *Shizong shilu*, 79: 31a–31b, March 2, YZ7 (1729).

(*xing'an huilan* 刑案匯覽), Routine Memorials of Board of Punishment (*xingke tiben* 刑科題本), Memorial Drafts of the Board of Punishment (*xingbu zoudi* 刑部奏底), and several collections of Autumn Assizes precedents. Unlike these records, central government rarely kept records of those cases finalized at the regional level. Only those that had been reported to the throne or for which edicts granting immediate execution (usually called *qingzhi jixing zhengfa* 請旨即行正法) were requested had records in the Qing Veritable Records (*Qing shilu* 清實錄), Palace Memorial Archives (*gongzhongdang* 宮中檔), and Grand Council Archives (*junjichu dang* 軍機處檔). Except for those recorded in these documents, summary execution cases were systematically excluded from official documents. During the late Qing period, thousands of men were executed annually through this procedure, and their identities remained unknown. Even in newspapers, officials' memoirs, private journals, and other local archives, many records only kept the ringleaders' names and brief descriptions. To the imperial centre, these cases did not deserve preservation and analysis. Individuals involved in these types of cases were supposed to be swept without mercy. They were arrested and quickly executed. Like the drifting status of roaming braves, all the events surrounding the convicts were just gone with the wind.

This dissertation explores the history of these forgotten executions that were widely practised in late Qing China. While tracing the roots of this practice back to ancient times, this study points out that summary execution initially boomed in the eighteenth century and then sharply increased during the nineteenth and early twentieth centuries. Various factors contributed to the rise of hastened death penalties. The population growth and the increasingly overburdened judicial system were two among

the many major reasons for this change during the prosperous Qianlong reign (1735–1796). By 1794, the nation’s population reached over 313 million, doubling the population of a century earlier.⁵ The explosive population created a series of social problems, including scarcity of land, an increased number of vagrants and “rootless rascals” (*guanggun* 光棍; literally “bare sticks”),⁶ emerging migration and conflicts between indigenous people and migrants, and a flood of litigations and popular protests.⁷ From 1736 to 1775, the number of manslaughter cases related to lands and debts increased from around 420 to over 1600 per year.⁸ Following the 1780s the number of Autumn Assizes cases continuously increased until the end of eighteenth century.⁹ In response, the Qianlong emperor (1711–1799) extensively used the “king’s order” (*wangming* 王命) to permit regional authorities to execute serious criminals without following the regular review procedure. New institutions such as the Grand Council and palace memorials enabled the Qianlong emperor to complete this reform from the top. The emperor particularly increased the use of secret memorials (*zouben* 奏本) in order to

⁵ Susan Naquin and Evelyn S. Rawski, *Chinese Society in the Eighteenth Century* (New Haven: Yale University Press, 1987), 106–12.

⁶ Considering both social and legal meanings of the term *guanggun*, Matthew Sommer argues that “rootless rascals” is a more idiomatic translation than “bare sticks.” See Matthew Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), 97.

⁷ On the rise and institutionalization of popular protest during the mid-Qing period, see Ho-fung Hung, *Protest with Chinese Characteristics: Demonstrations, Riots, and Petitions in the Mid-Qing Dynasty* (New York: Columbia University Press, 2011). On the practice of capital appeal during the Qing dynasty, see Li Dianrong 李典蓉, *Qing chao jingkong zhidu yanjiu* 清朝京控制度研究 (Capital Appeals during the Qing Dynasty) (Shanghai: Shanghai guji chubanshe, 2011); Jonathan K. Ocko, “I’ll Take It All the Way to Beijing: Capital Appeals in the Qing,” *Journal of Asian Studies* 47, no. 2 (1988): 291–315.

⁸ Thomas Buoye, *Manslaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth Century China* (Cambridge: Cambridge University Press, 2000), 237–38.

⁹ Sun Jiahong 孫家紅, *Qingdai de sizing jianhou* 清代的死刑監候 (Capital Punishment with Delay in the Qing Dynasty) (Beijing: Shehui kexue wenxian chubanshe, 2007), 332–33.

avoid the protracted procedure of routine memorials (*tiben* 題本) where the Board of Punishment had to carefully review each cases. However, throughout the Qianlong reign, the problems of protracted judicial process and the increased number of underclass and the threats to the authorities—including the conveniently defined “wicked people” (*diaomin* 刁民)—remained unresolved and the court continued to institutionalize this informal punishment. On the other hand, the expedient approach also created new problems for the Qing Empire. Since the Qing court extensively bestowed the power of summary execution on regional authorities, this procedure had evaded central authority over the death penalty and enhanced political intervention in the judicial process.

During the nineteenth century, the rapidly changed society forced the imperial court to adjust its approaches toward local armed groups and violent elements. The rise of local armed groups and the increase of banditry and rebellion changed the way people approached security. During the Taiping Rebellion (1850–1864), the Qing court authorized local officials and militia to inflict the death penalty. Heterodox and orthodox forces co-existed in what Philip Kuhn calls the “parallel hierarchies of militarization,” in which “the same kinds of linkages and the same levels of organization would [then] be visible within both the orthodox, gentry-dominated Confucian culture and the various heterodox, secret-society-dominated sectarian subcultures.”¹⁰ The militarization eventually led to a culture in which “soldiers and bandits were indistinguishable” (*bing fei bufen* 兵匪不分) and blurred the boundaries between legality and illegality.¹¹ As a

¹⁰ Philip A. Kuhn, *Rebellion and Its Enemies in Late Imperial China: Militarization and Social Structure, 1796–1864* (Cambridge: Harvard University Press, 1970), 165–88.

¹¹ Diana Lary, *Warlord Soldiers: Chinese Common Soldiers, 1911–1937* (Cambridge: Cambridge University Press, 2010), 59.

result, as this dissertation argues, summary execution as a death penalty practice profoundly influenced by both formal and informal forces was not merely a product of a “chaotic times.” Instead, it was integral to a wide variety of legitimation processes and was a product of social and political transformations before the advent of disastrous warfare.

The influence of summary execution went far beyond the Taiping Rebellion. After the fall of the Taiping Kingdom in 1864, summary execution was an element in the power conflicts between central and regional governments over the regulation of authority over punishment. The Qing court attempted to restore the regular procedure for the death penalty, but financial constraints and the emerging social unrest forced the court to retain the regional officials’ power of quick execution. Following the humiliating Boxer Rebellion of 1900, the imperial centre faced stronger pressure from reform-minded officials and intellectuals. It was forced to abolish the death penalty by slow slicing (*lingchi* 凌遲) and other cruel punishments.¹² Yet it further extended the use of summary execution to “allow the populace to witness the execution and thus make them feel vigilant and prudent.”¹³ The following decades witnessed the introduction of a Western legal system that tended to protect the defendant’s right to a fair trial. But the Republican state, regardless of its political orientation in Beijing, Nanjing, or Chongqing, continued the use of summary execution in a series of campaigns against “banditry,” “local strongmen” (*tuhao* 土豪), “evil gentry” (*lieshen* 劣紳), and those acting “counter-

¹² For an analysis of this reform and its cultural and political backgrounds in a comparative perspective, see Timothy Brook, Jérôme Bourgon, and Gregory Blue, *Death by a Thousand Cuts* (Cambridge: Harvard University Press, 2008).

¹³ *Zhengzhi Guanbao* 政治官報 (Political Government Gazette) 172, March 21, 1908, 7–8.

revolutionary” (*fangeming* 反革命) or “endangering the Republic” (*weihai minguo* 危害民國). Mobilized justice reached its height under the party-state system of the Nationalist Party (*Guomindang* or *Kuomintang* 國民黨, a.k.a GMD or KMT) and the Chinese Communist Party (*Zhongguo gongchandang* 中國共產黨, a.k.a. CCP). Eventually, such mobilized justice, featuring the style of “enemy-hunt” persecution, laid the foundation for the collective violence during the 1950s and the subsequent Cultural Revolution (1966–76).

From the development of summary execution, one can see that this practice—while defined as an extraordinary and even “rule-breaking” institution—was continuously sanctioned and legitimized by both central and regional authorities. Critics of this practice had long asserted its rash and irregular nature. Yet this procedure was particularly helpful in resolving various crises, and thus both government and the populace gradually acclimated to the extensive use of this exceptional penalty.

The epidemic of summary execution provides a unique window into the examination of Chinese law. While previous studies tend to adopt an “arbitrary vs. rational” dichotomy, the practice of summary execution transcends these two extremes. How, in the end, should we view the nature of imperial Chinese law, particularly considering its dramatic changes during the late imperial era? How does the case of summary execution help us understand the constructive forces of this so-called “lawless” (*wufa wutian* 無法無天) practice and its role in mid-and-late Qing Chinese society in a broader context? Further, how does it help us reevaluate the conventional “impact-response” model and the associated “legal modernization” thesis that both presume that

the centuries long Chinese legal system remained static and essentially unchanged until the advent of Western laws?

During the late nineteenth and early twentieth centuries, when China underwent its largest campaign of rough justice, it was not alone because Europe, the United States, and various other nations also encountered similar trends. How did the rise of Chinese summary execution resemble and differ from its Western counterparts and other civilizations in the history of rough justice around the globe? How does all of this help us challenge the conventional thesis that views Western law as “civilized” and Chinese law as “barbaric”?

Routine and Arbitrary Power in Chinese Law

Like many non-Western legal traditions, imperial Chinese law was perceived as “cruel” and “barbaric.” Roughly since the eighteenth century, Western observers viewing China through the lens of the Enlightenment, had depicted China’s legal practice as part of its “despotic” tradition. Following the frequent contact between China and the West, missionaries and travellers produced abundant accounts about Chinese judicial processes. Images of punishment practices—especially the notorious execution by slow slicing—appeared in illustrations and then photography before the end of the Qing dynasty. These accounts and images inevitably contained exaggerated and distorted information, while many precious first-hand and second-hand records were also preserved through this

channel. The public demonstration of cruel punishments offered an intriguing window for Westerners to imagine and visualize China's "legal cruelty."¹⁴

However, while many Westerners celebrated progress in their judicial systems, they intentionally or unconsciously ignored the fact that their practice of torture had to a great extent been as cruel as Chinese extreme punishments.¹⁵ Not to mention that even after the translation of the Great Qing Code, which contained a dedicated system of laws and precedents, Western observers continuously described the Chinese judicial process as arbitrary and ruthless.

Even though some observers noticed China's advanced civilization, the majority of critics focused on the "backward" characteristics of Chinese politics and legal system. Few had noticed that, at the central level, the Chinese state had long employed established rules and legal reasoning in adjudication. While criticizing the arbitrariness of Chinese law, Western observers neglected the multilayered judicial review procedure that had been practised throughout late imperial times. As a result, most scholars perceived

¹⁴ For the construction of Chinese "legal cruelty," see Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2015); for the imagination about "execution by slow slicing" and the surrounding narratives from both Western and Chinese observers, see Brook, Bourgon, and Blue, *Death by a Thousand Cuts*; for the history of legal Orientalism, see Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge: Harvard University Press, 2013). On the other hand, China's strong bureaucracy also appealed to many Euro-American observers. As Ruskola notes, similar with their European precedents, the Founding Fathers of America also held up China as "an example of a secular empire run by a rationally organized bureaucracy." See Ruskola, *Legal Orientalism*, 46.

¹⁵ An excellent example of European harsh and torturing punishment can be seen in Michel Foucault's gruesome opening section of *Discipline and Punish*. See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Random House, 1977). For the comparison between European and Chinese cruel punishments in history, see Brook, Bourgon, and Blue, *Death by a Thousand Cuts*.

Chinese law as arbitrary and despotic. The vivid account and visual representation of the death penalty reinforced the image of China's legal cruelty.

The continued critiques of the Chinese legal system reflect not only the ways Westerners perceived others but also the ways they constructed and reconstructed themselves. In *Death by a Thousand Cuts*, Timothy Brook, Jérôme Bourgon, and Gregory Blue point out that travellers from the West, while deeply immersed in the idea that framed execution as “a redemptive ordeal through which the victim is prepared for judgment in the afterlife,”¹⁶ had constantly used the scenes of death by slow slicing as a vivid example of China's “illegitimate and barbaric” legal system.¹⁷ Many observers visited the execution sites with an “ambivalent alternation between repulsion and fascination.”¹⁸ Their accounts reflected the “rhetoric of Western superiority that rewrote Western fantasy as Chinese reality.”¹⁹ Similarly, Teemu Ruskola in his *Legal Orientalism: China, the United States, and Modern Law* points out that while America sees its law as “particularly universal,” it sees its Chinese counterpart as “universally particular.”²⁰ The American authorities continuously constructed Chinese law as barbaric

¹⁶ Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 206.

¹⁷ Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 209.

¹⁸ Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 220.

¹⁹ Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 247.

²⁰ According to Ruskola, the concept of “legal Orientalism” refers to “the ways in which ‘the Orient,’ as well as the Euro-American ‘West,’ have been produced through discourses of law.” Even today, when China has introduced a large number of modern laws, legal Orientalism is still present and thus China's law reform—like its previous experience of extraterritoriality—can be viewed as “a colonialism without even colonizers.” On the other hand, Ruskola also notices that in the post-1980s period, “[t]he modern Chinese legal subject is not just a (poor) reproduction of its Euro-American counterpart.” After having been “clothed in the legal garb of modern citizenship,” Chinese subjects are able to utilize the new laws to fight against “their employers, landlords, each other, and even the state.” Ruskola, *Legal Orientalism*, 5, 199, 208, 213. Here, my concern is not about theoretical orientation. Instead, I try to contextualize my work in the extant studies of Chinese legal culture and practice.

partly because the United States intended to rationalize its privilege of extraterritorial jurisdiction in China. At the same time, following the flood of Chinese immigrants, American legislation and the Supreme Court justified anti-Chinese laws partly based on the thesis that Chinese citizens were not as “civilized” as Americans.²¹

The construction of the narratives about Chinese legal cruelty came not only from Western critics but also from Chinese literati before and after the Western impact. *Death by a Thousand Cuts* vividly reveals how Chinese literati criticized the practice of slow slicing and, particularly during the “New Policies” period following the humiliating results of Boxer Rebellion of 1900, their voices were adopted and led to the abolition of cruel punishments.²² The complex construction of the image of Chinese law was, as Thomas Buoye asserts, full of “obfuscation and obstruction.” Chinese and European actors misinterpreted the laws in part to negotiate their rights or exaggerate the other side’s negligence.²³ As a result, Li Chen further argues, the conflicts and interactions between China and the Western powers created “contact zones” in the field of law in which “modern Sino-Western cultural or racial boundaries have been asserted, contested, or normalized, both intellectually and institutionally.”²⁴

While scholars in the West sought an understanding of Chinese law, they did so not only because of the need for knowledge, but also out of the need to understand the

²¹ Ruskola, *Legal Orientalism*, 9, 143.

²² Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 96.

²³ Thomas Buoye, “‘Hunyao shiting’: Xifang ren de Zhongguo falü guan: yuanyu yapian zhanzheng zhiqian de cuowu renzhi” ‘混淆視聽’: 西方人的中國法律觀—源於鴉片戰爭之前的錯誤認知 (Obfuscation and Obstruction: The Pre-Opium War Origins of Western Misperceptions of Chinese Law), trans. Wang Zhixi 王志希, in *Falüshi yiping (2013 nian juan)* 法律史譯評 (2013 年卷) (Legal History Studies 2013), ed. Zhou Dongping 周東平 and 朱騰 Zhu Teng, 272–92 (Beijing: Beijing daxue chubanshe, 2013).

²⁴ Chen, *Chinese Law in Imperial Eyes*, 10.

modern world and the modernity of Western civilization. Max Weber's categorization of the Chinese magistrate's adjudication as "kadi justice," a type of justice which is "substantive" and "irrational" rather than formal and rational, can be seen as a typical perspective of late nineteenth- and early twentieth-century Europeans concerning the nature of Chinese law. Even though the study of Sinology and Chinese law and political institutions has advanced in the last century, such a Eurocentric view persists. David Buxbaum, in his pioneering essay in the 1970s on traditional Chinese "civil procedure," warned his colleagues to avoid reaffirmation of the prevailing view of traditional Chinese law, which was derived from "ethnocentrism," "extreme relativism," and "pro-Western" ideology.²⁵ Thomas Buoye also observes how European imperialism during the late nineteenth century condemned the cruelty and backwardness of Chinese law in order to justify its extraterritoriality. Such an attitude reinforced the prevailing notion that Chinese law was not mature and rational, and thus made many Western scholars ignore the significance of the Chinese legal tradition.²⁶

The enduring reproduction of the narratives highlighting Chinese legal cruelty also reveals how conventional perspectives neglected the complex practice of Chinese laws and the dynamics within the system. The lenses of "rationality" and "civilization" not only reinforced the view that the force of modernity could sweep away all the old and "backward" medieval legacies but also impacted the ways modern scholars approached the Chinese legal tradition. But at a deeper level, at least in the perception of Chinese

²⁵ See David Buxbaum, "Some Aspects of Civil Procedure and Practice at the Trial Level in Tanshui and Hsinchu from 1789–1895," *Journal of Asian Studies*, 30.2 (1971): 255-79.

²⁶ See Thomas Buoye, "Sifa dang'an yiji Qingdai Zhongguo de falü, jingji, yu shehui de yanjiu" 司法檔案以及清代中國的法律, 經濟, 與社會的研究 (Law, Economy, and Society: Recent Trends in Chinese Legal Studies in the United States), trans. Pengsheng Chiu 邱澎生, *Fazhishi yanjiu* 法制史研究 (Legal History Review) 4 (2003): 217-244.

political structure and monarchical system, the majority of views perceived China's system as "rule of man" and depicted the Chinese emperor as the ultimate power that stood on top of the imperial legal system. Many scholars, while noticing the bulky statutory system, stressed the "despotic" feature of the emperor having the final power to decide death sentences. Despite the establishment of a judicial review system, Chinese law had not developed any equivalent of what is called the "doctrine of the presumption of innocence" and "due process" in the modern Western legal system. The Chinese empire established the Censorate agency in the early imperial period. In contrast to the Western "checks and balances" system, the supervisory agency in China was directly responsible to the emperor. All of these things suggest that the ultimate authority in the imperial Chinese legal system was the emperor, not judicial officials or other institutions.

Here, one should notice that China had developed a sophisticated legal studies tradition to restrict abuse of power in adjudication, particularly since the Tang (618–907 CE) and Song (960–1279 CE) Dynasties. The gradually expanding legal compilations included case collections, law interpretations, personal notes and memoirs, and instructions to officials, legal advisors, and other law-related practitioners. At the central level, the judicial officials during the Ming (1368–1644) and Qing (1644–1912) Dynasties further developed delicate legal reasoning. The major purpose of this sophisticated system was to unify the scales of justice and standards of adjudication. The judicial review system placed regional adjudications of felony cases under the supervision of central judicial authorities. Moreover, the legal reasoning of central judicial officials not only restricted the power of local officials but also restricted the ultimate power of the emperor in judicial procedures. The compilation of legal precedents

and the analogy of relevant legal cases constituted a relatively rational and predictable adjudication mechanism. Even when the emperor intended to use his own power to intervene in the decisions, he still had to consider the established statutes and precedent system. As Philip Kuhn asserts, the Qing political system constituted a “bureaucratic monarchy” in which the monarch was as “ambivalent toward formal administrative procedures” as his bureaucratic subordinates and yet at the same time he was highly concerned to “maintain his own distinctive position, his extra-bureaucratic power and autonomy.”²⁷ The paradoxical combination of routine and arbitrary power also reflected the intriguing nature of what Shiga Shūzō (滋賀秀三) calls the “mandatory procedure of repeated adjudication” (*hitsuyōteki fukushin* 必要的覆審) in the case of felony crimes (*zhong'an* 重案).²⁸ On the one hand, the multitiered inspection and the repeated memorial procedures restricted the power of bureaucrats and the emperor. On the other hand, the throne possessed the final authority in the death sentence, ensuring that the power of taking life was in the hands of the sovereign and that the state law was an expression of the emperor’s will. In actual practice, the Nine Ministers’ (*jiuqing* 九卿)²⁹ opinions and

²⁷ Philip A. Kuhn, *Soulstealers: The Chinese Sorcery Scare of 1768* (Cambridge: Harvard University Press, 1990), 190. In addition, Josephine Chiu-Duke in her study of Lu Chih (Lu Zhi; 陸贄) during the mid-Tang period also argues that the ruler-minister relation was an “unbalanced symbiosis” because the emperor had the arbitrary power to replace members of the bureaucracy and “the power of the bureaucracy as a pressure group vis-à-vis the throne was greatly weakened.” See Josephine Chiu-Duke, *To Rebuild the Empire: Lu Chih’s Confucian Pragmatist Approach to the Mid-T’ang Predicament* (Albany: State University of New York Press, 2000), 192.

²⁸ Shiga Shūzō 滋賀秀三, *Shindai Chūgoku no hō to saiban* 清代中国の法と裁判 (Law and Justice in Qing China) (Tokyo: Sōbunsha, 1984), 23–39.

²⁹ Nine Ministers is a collective body of major high officials in the central government. For a brief discussion of the organization of Nine Ministers in Qing dynasty, see Frederic Wakeman Jr., *The Great Enterprise: The Manchu Reconstruction of Imperial Order in Seventeenth-Century China*, vol. 1 (Berkeley: University of California Press, 1985), 852.

existing political ideologies, including the discursive tradition of benevolence and the consideration of the harmony of human-nature, not only prevented abuses of power but also reduced the number of executions after the annual Autumn Assizes.

In their classic study on the *Conspectus of Penal Cases*, Derk Bodde and Clarence Morris demonstrate how the emperor and central judicial officials elaborated norms for behaviour, organized different realms of legal cases, and tried to match each case with a proper punishment.³⁰ Klaus Mühlhahn's recent study, *Criminal Justice in China: A History*, also suggests that imperial Chinese criminal justice was seeking the "right degree of pain" and that "through a complex system of reviews, balances, and double checks, the Board of Punishment and the emperor exercised fairly stringent control over the criminal justice system."³¹ In the eighteenth century, an increased number of convicts waited for several years or even decades before their final sentences. As Thomas Buoye argues, this "lingering imprisonment" not only became a de facto punishment but also reflected the presentation of Qing criminal justice as benevolent.³² In turn, the gradually increased delayed executions posed a challenge to the already overburdened judicial system. While the bureaucratic monarchy and multitiered judicial review procedures had significantly restricted the power of the emperor and judicial officials, the financial constraints and rapidly changing social circumstances also affected the process of

³⁰ See Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge: Cambridge University Press, 1967).

³¹ Klaus Mühlhahn, *Criminal Justice in China: A History* (Cambridge: Cambridge University Press, 2009), 55-56.

³² Thomas Buoye, "Death or Detainment: The Dilemma of Eighteenth-century Chinese Criminal Justice," paper presented at the International Workshop on Chinese Legal History, Culture and Modernity, Columbia University, May 4-6, 2012.

adjudication and law enforcement, particularly when the prosperous empire encountered a series of crises during the eighteenth and nineteenth centuries.

If even the rigidly scrutinized felony case procedure encountered the tensions between routine and arbitrary power, it is not surprising that the relatively loosely regulated realm of “trivial matters” (*xishi* 細事) encountered similar challenges from both social and political dynamics. Scholars have long wondered whether imperial China had ever established a set of predictable rules for minor disputes and offences. Cases regarding land, debt, and marriage disputes constituted the largest proportion of local judicial cases. While scholars have noticed the field of what they call “customary law” (*xiguanfa* 習慣法) and a variety of practices that were arranged by private individuals and even acknowledged by local officials, many perceive this realm as driven and operated by social relations and local dynamics.

As scholars assert, the normative nature of law governing “civil cases” was much less rigid and stable than those adjudicated through multitiered judicial review. As a result, when Philip Huang challenged the thesis of Chinese law’s “irrational” characteristics with a unique approach to and revision of Weber’s theory, a fierce debate was triggered between established scholars from Japan and the United States.³³

According to Huang, even for cases involving “trivial matters,” which were allowed to be finalized at the level of the magistrate’s court without being scrutinized by superior

³³ Their debate came to the surface when scholars on both sides attended a conference entitled “Law, Society, and Culture in Late Imperial China” in Japan in 1996. For more details about the debate at this conference, see Terada Hiroaki 寺田浩明, “Qingdai minshi shenpan: xinzhi ji yiyi—rimei lianguo zhijian de zhenlun” 清代民事審判: 性質及意義 - 日美兩國之間的爭論 (Civil Justice in the Qing: Nature and Significance—The Debate between Japanese and American Scholars), trans. Wang Yaxin 王亞新, *Beida faxue pinlun* 北大法學評論 (Peking University Law Review) 1.2 (1999): 603–17.

judicial officials, magistrates usually followed the rules derived from the “original spirit of the statute” to protect litigants’ “legitimate interests.”³⁴ Huang finds that Max Weber’s term “substantive rationality,” which Weber himself did not elaborate well, can be a useful category for conceptualizing the Chinese legal system. On the one hand, imperial Chinese law was “substantive” because the will of the ruler was the sole legitimate source of authority for all laws; the law was guided by moral principles, and judicial process emphasized the real truth rather than the courtroom truth. On the other hand, a certain degree of predictability or consistency or universality can be found in Chinese law, and this can prove the “rational” nature of the Chinese legal system. Given that the statute was the extension of the ruler’s will, based on “estimations of heavenly principles and considerations of human compassion,” and that the “original spirit of the statute” was applied to cases in magistrates’ trials, for Huang the Qing “formal” justice can be taken as embodying “the twin paradoxical dimensions of substantivism and rationality.”³⁵

Huang’s theory challenges the thesis that Chinese law was arbitrary and repressive. He argues that even though in theory Qing law contained an official ideology of absolute power for the ruler and there were no “rights” in the sense of rights guaranteed by law independent of administrative power, in actuality local courts consistently upheld property and contract rights.³⁶ Based on his examination of the nature and function of formal and informal justice, Huang indicates an intermediate sphere of judicial practice in which the formal adjudication of the magistrate’s court interacted with informal community mediation to form a “third realm” of local dispute resolution. In this

³⁴ See Philip Huang, *Civil Justice in China: Representation and Practice in the Qing* (Stanford: Stanford University Press, 1996), 82.

³⁵ See Huang, *Civil Justice in China*, 224–29.

³⁶ See Huang, *Civil Justice in China*, 108.

realm, disputes were resolved not only by magistrates but also by the local gentry and elites. While Huang perceives that the codified laws played a significant role in both the formal and informal realms, he argues that it was only in the third realm that formal and informal justice operated on relatively equal terms, as long as that justice worked within the boundaries set by codified law.³⁷

Huang is astute in pointing out the various competing mechanisms in Chinese law, including the “substantive rationality” and what he calls the paradoxical combination of “representation” and “practice.” He views codified law as an irresistible force that penetrated almost every realm in Chinese legal culture. Even in civil justice where the state and bureaucrats granted a large degree of flexibility and expediency, law was still a visible force and the ultimate power of the rulers had to give way to rights and the established rules. However, Huang fails to deal with the changes of policies and the dynamic relations between actors at the regional and central levels. His “third realm” certainly offers a great framework for observing the interaction between formal and informal forces, but his static approach can hardly explain why these factors connect with each other and how their connections related to changing circumstances.

Contrary to Huang, Shiga Shūzō, who was the leading scholar in Japanese studies of Chinese legal history, proposed to use “source of law” theory, which primarily consists of *qing* (情; human sentiment, circumstances, or social relation), *li* (理; reason), and *fa* (法; law). The consideration of “*qing*” reveals that local officials took into account the matters of local dynamics and social relations. Borrowing ideas from D. F. Henderson’s study on law in Tokugawa Japan, Shiga proposes his famous concept of “didactic

³⁷ See Huang, *Civil Justice in China*, 9–10, 110, 135–37.

conciliation,” in which local cases were not strictly tried according to the law. To Shiga, such processes showed a certain degree of arbitrariness, but they were under a larger framework of “*qing-li-fa*” structure as local authorities always sought to build a balance between various competing forces.³⁸

What is intriguing here, however, is that both Huang and Shiga fall into the trap of a static and even rule-oriented model. Although Shiga attempts to avoid bending Western concepts into the Chinese context, he always examines whether or not Chinese “custom” or “*qingli*” (情理) can be taken as a “source of law,” which in the Chinese context has a similar but still different definition and function from that of the West.

Following Shiga, another Japanese scholar, Terada Hiroaki (寺田浩明), switches the discussion from codified law and “source of law” to the formation process of dispute resolution. Terada follows Shiga’s view that Chinese “*qing*,” “*li*,” and “*fa*,” in comparison with European law, lacked stability and a positive nature and thus could not play the role “law” played in Europe. He criticizes Philip Huang and Morita Shigemitsu’s (森田成滿) thesis that Qing justice “protected people’s rights” and argues that magistrates did not follow any objective rules when they adjudicated civil cases.³⁹ However, Terada also observes how Qing China experienced a great transformation in terms of expanding markets and increasing land disputes. In the actual cases in a

³⁸ See Shiga Shūzō, “Qingdai susong zhidu zhi minshi fayuan de gaiguazing kaucha: qing, li, fa” 清代訴訟制度之民事法源的概括: 情, 理, 法 (A General Survey of the Sources of Law in Qing Civil Justice: Qing, Li, and Fa), in Shiga Shūzō, Terada Hiroaki, Kishimoto Mio 岸本美緒, and Fuma Susumu 夫馬進, *Ming-Qing shiqi de minshi shenpan yu minjian qiyue* 明清時期的民事審判與契約 (Civil Justice and Civil Contract in the Ming-Qing Period), trans. Wang Yaxin, (Beijing: Falü chubanshe, 1998), 19-53.

³⁹ See Terada Hiroaki, “Quanli yu yuanyi” 權利與冤抑 (Rights and Wrongful Judgment), in Shiga, Terada, Kishimoto, and Fuma, *Ming-Qing shiqi de minshi shenpan yu minjian qiyue*, trans. Wang, 193-196.

magistrate's trial, the disputants usually claimed that their legitimate interests had been harmed by the opposing party so that these disputants resorted to the judicial process to “give voice to injustice” (*shenyuan* 伸冤; or “clear up the wrongful deeds or false charges”).⁴⁰ Thus it would appear that the disputants possessed a certain degree of “rights” or “property rights,” especially from land. How should one link non-positive “law” with marketizing land “rights” and the discourse of “clearing up wrongful deeds or false charges”? Terada suggests that there is a need to return to the spatial structure in which members of the community usually competed with others where magistrates could only propose temporary solutions to settle conflicts over “rights.”⁴¹

Most modern scholars tend to follow the imperial classification of “trivial matters” and “felony crimes.” Yet in actual practice, merely imposing strict bureaucratic scrutinizing did not necessarily make the review procedures rational and impartial. In her study on the memoir of a Shanghainese named Yao Tinglin (姚廷遴, 1628—?), Kishimoto Mio (岸本美緒) found that various felony crimes were settled through informal procedures, and even manslaughter cases could be mediated without following the mandatory review procedure.⁴² As my research has shown, the diary of a late Qing village gentry, Zhang Gang (張綱, 1860—1942), clearly demonstrates that local feuding cases involving the death of more than ten people could be mediated and compensated

⁴⁰ See Terada, “Quanli yu yuanyi,” 214–18.

⁴¹ See Terada, “Quanli yu yuanyi,” 217–18.

⁴² Kishimoto Mio, “Qingchu Shanghai di shenpan yu tiaojie: yi li nian ji wei li” 清初上海的審判與調解: 以〈歷年記〉為例 (Trial and Mediation in Early Qing Shanghai: *Linian ji*), in *Jinshi jiazhu yu zhengzhi bijiao lishi lunwen ji* 近世家族與政治比較歷史論文集 (Family Process and Political Process in Modern Chinese History), ed. Zhongyang yanjiuyuan jindai shi yanjiusuo 中央研究院近代史研究所, 238–57 (Taipei: Zhongyang yanjiuyuan jindai shi yanjiusuo, 1992).

between local families with merely light intervention of the county magistrate.⁴³

Although the limitation of sources prevents us from further examining the overall picture of the process of reviewing capital crimes, many local sources suggest that expediency and informality were not uncommon in the adjudication of serious crimes. Local feuding was one among many violent conflicts frequently finalized by mediation or lighter punishment in late imperial China. Apparently, many felony crimes did not go through a rigid review process. They were handled in a flexible manner with the consideration of local dynamics and relevant social and economic issues.

Moreover, some informal and even “illegal” practices were sanctioned within the bureaucratic system. According to Bradley Reed, personnel working in local government performed a range of critical tasks that were indispensable parts of the local administration. However, these personnel were not officially admitted by the governmental statutes and were even forced to collect a customary fee from ordinary people. Most people regarded these clerks and runners as “rogues,” “wastrels,” and “unaccountable troublemakers” devoted solely to their own profit.⁴⁴ To modern scholars, yamen clerks and runners are particularly difficult to fit into the Weberian conceptual schema and administration. Based on the trajectory of Europe, Weber characterized a modern bureaucratic organization as being both legal and rational. The bureaucracy, in Weber’s view, must be regulated by statutes and separate the person of the office holder from the authority and functional utility of the office itself. Under the influence of Weber,

⁴³ Weiting Guo, “Living with Disputes: Zhang Gang Diary (1888–1942) and the Life of a Community Mediator in Late Qing and Republican China,” *Journal of the Canadian Historical Association* 24, no. 2 (2013): 218–62.

⁴⁴ Bradley W. Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford: Stanford University Press, 2000), 2–4, 29, 149.

most studies have focused on the statutory structure rather than the practice of governmental personnel and even view runners and clerks as a “dangerously disconnected group”—disconnected from both state and society.⁴⁵ As Reed argues, these perspectives do not fit the Chinese context. The imperial Chinese bureaucracy identified with charismatic, traditional, and highly personal Confucian moral ideas. Clerks and runners were outside the statutory order and they relied largely on personal bonds. These extrastatutory personnel enjoyed certain authority given by the government, and they “sought to validate their positions and careers by articulating claims to the social and political utility of their role as bureaucratic functionaries and administrative specialists.” In this sense, as Reed argues, clerks and runners achieved what might be called an “illicit legitimacy” which contains rationalized and rule-driven elements.⁴⁶ He argues that one should not simply deny the legitimacy of these administrative functionaries by claiming their “illicit” nature. One should not take them to be deviant because the rules that were established by the groups of clerks and runners themselves brought them under a certain degree of control.

Reed’s argument offers a fresh and insightful reminder that Chinese bureaucracy cannot be understood using a European model or other external idea of “rationality.” Many “illicit” practices should not simply be viewed as illicit even if official discourses deemed them intolerable and listed them as targets of suppression. Here, we could borrow Philip Huang’s creative framework of the paradoxical combination of “representation” and “practice.” While state law and Confucian morality denounced institutions with illicit or immoral characteristics, in practice these institutions could be

⁴⁵ See Reed, *Talons and Teeth*, 7-11.

⁴⁶ See Reed, *Talons and Teeth*, 5-13; quotation from p. 12.

widely accepted and even become an integral part of local governance. This was especially the case of summary execution, which had been torn between formality and informality ever since its initial surge. The Qing court continuously made summary execution “exceptional” even during its peak during the Taiping Rebellion. While bandit suppression certainly served as the core realm of summary execution, the Qing authorities extended the use of this “extralegal” instrument and routinized its procedure.

Why did this extralegal practice emerge and challenge the existing criminal justice system? How did the emperor and judicial officials manipulate and negotiate the operation of this exceptional procedure? How did ordinary people and social organizations respond to the reform from the government and the gradually epidemic practice of quick execution? How did this punishment, which had never been listed as a formal institution, formulate the politics of exception in modern Chinese criminal justice? To understand fully the practice of this institution, it will be helpful briefly to discuss the rise of summary execution in Qing history. More importantly, we have to link it with the greater development of Chinese society and politics, and see how it helps us understand the history of China, particularly from one of its most prosperous times to a period consistently perceived as the crisis of the nation.

The Evolution of Summary Execution in Chinese History

To trace the history of “summary execution,” one first has to define the meaning and scope of this term. The imperial Chinese legal system had long established regular and exceptional procedures for the death penalty. In different periods, dynastic rulers developed different procedures and punishments for judicial authorities or agents to

exercise quick justice. In order to analyze all these varieties of sped-up death penalties, this dissertation adopts a broad definition of summary execution. The term refers to an execution in which a person is immediately killed without completing the full regular judicial process. The procedure was not necessarily exceptional or informal, but it was exercised in a way that differed from the complete regular process.

In adopting this definition, the analysis in this dissertation inevitably includes some sped-up executions that have been viewed as part of the regular death penalty. Some categories were in between summary execution and the regular process. Two examples include the procedures called “instant execution without consideration for the season” (*budaishi* 不待時) and *lijue*. The former category was established in the pre-Qin period. It applied to crimes involving dissident and heterodox elements, in which the criminal could be executed in a season that was considered to be a harmonious and flourishing period.⁴⁷ The latter was primarily developed during the Ming and Qing Dynasties. Its origin could be traced to the Sui dynasty when “true capital crimes” (*zhenfan sizui* 真犯死罪) were excluded from consideration for amnesty or lighter punishment. During the Ming dynasty (1368–1644), the category of true capital crimes was further divided into execution in autumn and execution at any time. In the late Ming period, the distinction between *lijue* and *jianhou* (suspended execution; 監候) gradually took shape and became a formal distinction of capital cases in the Qing dynasty.⁴⁸ Apparently, *budaishi* and *lijue* were exceptions to a certain segment of the death penalty. The former received complete investigation but was put into execution without further

⁴⁷ Hu Xingdong 胡興東, *Zhongguo gudai sixing zhidu shi* 中國古代死刑制度史 (A Study of the Death Penalty System in Ancient China) (Beijing: Falü chubanshe, 2008), 51–52.

⁴⁸ Hu, *Zhongguo gudai sixing zhidu shi*, 64–67.

waiting. The latter waived the final, thorough reassessment process, and the prisoner could be executed without long detention, but after the case had gone through all levels of regional adjudication. More importantly, both categories were formally stipulated as official categories of the death sentence. They can be viewed as summary execution because they omitted certain elements of the regular procedure, yet they are not entirely “summary” because both received relatively sufficient investigation before the final sentence.

“Summary” or not, these procedures were not isolated from the broader range of punishments and legal measures. Dynastic rulers frequently adjusted the laws and sentences in accordance with social and political circumstances. Sometimes they increased the laws relating to the death penalty, but in practice adjusted the number of executions and altered the sentences to lighter punishment. Sometimes the rulers changed the criteria distinguishing *lijue* from *jianhou*. In turn, new challenges followed because the judicial officials had to re-define the appropriate penalties for other relevant or comparable offences. Even the distinction between felony crime punishment and trivial matter punishment was not as fixed as was expected. One example is flogging with heavy sticks (*zhang* 杖) and flogging with light sticks (*chi* 笞). Ever since the pre-Qin period, flogging was considered as a corporal punishment and an instrument to obtain confessions during the investigation. Throughout history, this punishment had been designed as the lowest-level punishment in the empire’s hierarchical system. However, in practice, regional officials frequently abused the penalty since the imperial court at times implicitly allowed officials to execute convicts by flogging. During the Tang dynasty (685–762) when the Chinese state increasingly centralized and standardized the use of the

death penalty, it also gradually sanctioned the informal punishment of “giving convicts a certain number of heavy strokes to execute them” (*zhongzhang yidun chusi* 重杖一頓處死). After the Tang dynasty, such penalties continued to flourish until the Ming state initiated a new wave of centralizing punishments. The increasing emergence of this informal death penalty was closely associated with the growing tensions between local officials and social powers. It also reveals that the state and officials created a space for judicial expediency as a way to respond to the increasingly centralized and standardized criminal system.

As a result, to understand the rise and continuing flourishing of summary execution, one has to place it in the greater context of the changing social, economic, and political circumstances. Chinese rulers had long created a complex and protracted reviewing procedure to secure the outcome of adjudication and prevent any excessive use of power in regard to the death penalty. After a long, chaotic time in which regional authorities arbitrarily executed convicts through informal and military procedures, the Sui (581–619) and Tang rulers extensively increased imperial control over the practice of extreme punishment. The imperial court, to maintain the flexibility of punishment and the deterrent effect of the death penalty towards official and ordinary people, gradually increased the use of execution by flogging as an informal yet useful punishment to adjust the rigidity of imperial law. The emperor continued to possess the ultimate power of taking life while at the same time he also had to consider the discourse of benevolence and the benefit of converting a death sentence to exile and penal servitude, particularly when the state needed manpower in remote or undeveloped regions. Although the informal death penalty went through several declines in the following centuries, it existed

as an expedient tool for the emperors to battle in political struggles and punish unruly subjects without the restriction of gradually centralized laws.

Centralizing the death penalty eventually reached a peak in the Ming and Qing Dynasties. The compilation of the imperial code and the expanding body of judicial precedents made the reviewing process increasingly detailed and protracted. At the same time, China encountered one of its largest legislations of the death penalty. The imperial court aimed to increase the possibility of including convicts in the broader category of death sentence. It divided cases of suspended execution into four categories in the reviewing process of the Autumn Assizes, including cases whose offences were verified (*qingshi* 情實), cases with deferral circumstances (*huanjue* 緩決), cases with the probability of receiving mercy (*kejin* 可矜), and cases with dubious causes for reducing the penalty (*keyi* 可疑).⁴⁹ The classification enabled the emperor and judicial authorities to determine the pace at which to deal with each offence in accordance with its severity and investigation progress. On the other hand, as Brian McKnight points out, Ming-Qing rulers reduced the use of amnesty not only because of the increased statutory restriction but also due to the state's dependency upon the semi-official dispute resolution mechanism.⁵⁰ Sources reveal that the centralization of criminal justice came hand in hand with the increased use of the death penalty. Yet various competing phenomena, including the lingering imprisonment, the emergence of summary execution, and the rise of

⁴⁹ Recent studies on the limits and politics of the Autumn Assizes include Li Chen, "Regulating Private Legal Specialists and the Limits of Imperial Power in Qing China," in *Chinese Law: Knowledge, Practice, and Transformation, 1530s to 1950s*, ed. Li Chen and Madeleine Zelin (Leiden: Brill, 2014), 84–123.

⁵⁰ Brian E. McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu: University Press of Hawaii, 1981), chapters 5–6.

regional authorities and social powers, appeared as concurrent trends initially in the late Ming and subsequently during the Qing period.

Whatever the reason behind the changes, the death penalty, as Timothy Brook argues, remained one of the purest expressions of China's state sovereignty even as the state empowered its agents to execute the procedure on behalf of the state.⁵¹ During the latter half of the Ming dynasty, political struggle and social unrest compelled the imperial centre to consider speeding up the execution of offence ringleaders.⁵² Again, the emperors resorted to execution by flogging, which the previous Ming rulers had significantly restricted. Contrary to the earlier centralizing project, now the Ming state had to face strong challenges from high officials and eunuchs. The monarchs gradually loosened their control over officials' use of execution by flogging. The imperial court increasingly granted amnesty to those who abused the penalty and flogged convicts to death.⁵³ The local authorities, while being left to govern the vast territory with only limited resources, relied on penitence punishment (*shuxing* 贖刑) and frequently killed those who refused to pay fees or taxes required by the officials. Execution by flogging thus emerged as a common expedient penalty when social powers formed a visible force in the public realm, and local officials had to develop strategies for handling local politics, rapid commercialization, and the growing expenses of local governance. In the end, the

⁵¹ Timothy Brook, "Capital Punishment and State Sovereignty in China," *Sungkyun Journal of East Asian Studies* 11, no. 2 (2011): 107–21.

⁵² The most obvious evidence is the increased use of Shangfang Sword (*shangfang jian* 尚方劍), military justice procedures (*junfa congshi* 軍法從事), and execution by flogging (*zhangbi* 杖斃). For the rise of these, see Chapter 1.

⁵³ *Ming shilu* 明實錄 (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 1966), *Xianzong Shilu*, 107: 2090, August 23, CH8 (1472; CH = Chenghua reign); *Ming shilu, Xianzong Shilu*, 116: 2249–50, May 17, CH9 (1473); *Ming shilu, Xianzong Shilu*, 120: 2308–9, September 3, CH9 (1473).

practice of beating to death remained even though the imperial court constantly condemned its exceptional and illicit nature.

In addition to the revitalizing of execution by flogging, a more intriguing form of sped-up justice was the Shangfang Sword (*shangfang jian* 尚方劍 or 上方劍, also known as *shangfang baojian* 尚方寶劍, *zhanma jian* 斬馬劍, and *duanma jian* 斷馬劍).

Symbols such as the hatchet (*fuyue* 斧鉞), imperial swords (*yujian* 御劍), banner (*jing* 旌), and tally (*jie* 節) had been used in preauthorized execution long before the surge of the Shangfang Sword in the late Ming period. Yet it was during this period that preauthorized execution, which combined the practices of military action and the death penalty, became an intermediate adjuster between the monarch and the bureaucracy. The bearer of the sword possessed the power to “carry out military justice procedures” (*junfa congshi* 軍法從事) and punish criminals in an “expedient manner” (*bianyi xingshi* 便宜行事). He could even execute generals of high rank and having high achievements. The emperors granted such a sword primarily because they needed someone to deal with urgent situations. Particularly during the Wanli (1572–1620) and Chongzhen (1627–1644) reigns, when the tension between the monarch and officials was significantly intensified, the emperor had little choice but to empower trusted persons with a license to kill.

While the rise of the Shangfang Sword was primarily due to the fierce political struggle and increasing social unrest, the short period of its use was due to the same circumstances. The bearer of the sword frequently faced challenges from competing officials. The emperors also suspected his loyalty, as he possessed the power to kill any official. Such highly precarious relationships made the operation of preauthorized

execution unstable and unsustainable. In the end, the monarch still needed an efficient channel to facilitate the communication for urgent punishment. This kind of communicative mechanism was not available until the eighteenth century, when the existing judicial and bureaucratic procedures were found incapable of handling the rapidly changed society and increasingly complicated legal disputes.

In the eighteenth century, China witnessed not only the largest legislation of capital punishment law but also an extensive reform to quicken the procedure.⁵⁴ The ambitious Qianlong emperor played a significant role in this new trend. Through the use of the Grand Council and the imperial memorial system, he was able to communicate with regional officials and command them to break the existing rules to enhance legal expediency. The major purpose of Qianlong emperor's reform was to consolidate his own authority and re-strengthen the increasingly inefficient bureaucracy—an approach that combined the somehow contradictory forces of monarch and bureaucracy. While the empire rapidly expanded both in territory and population, the new challenges, including the increased number of vagrants and a flood of litigations and popular protests, compelled the throne to change the existing system to suppress revolts and eliminate unruly subjects.

One of the new initiatives was to extend the Ming institution of the “banner plaque” (*qipai* 旗牌) and link it with the procedure of “king's order” to bestow upon regional authorities the power of summary execution. In contrast to his Ming predecessors, the Qianlong emperor grounded his preauthorized execution on a request approval mechanism thanks to the establishment of the Grand Council (*junjichu* 軍機處)

⁵⁴ Hu, *Zhongguo gudai sixing zhidu shi*, 363–66.

and imperial memorials. In addition to this institution, the Qianlong emperor also increased the severity of the Ming punishment for “rootless rascals” and extended the scope to the broadly defined “wicked people.” He re-enacted the Ming punishment of execution by flogging and exhorted officials to execute ringleaders without completing the full reviewing procedure. The new punishments applied militarized procedures to ordinary people while the throne also speeded up the punishment for deserting exiles and soldiers, particularly in the borderlands. Through the introduction of new categories of crime, the emperor not only got rid of the established restrictions but also provided the basis for governors to request fast execution. Although the Qianlong emperor encountered some challenges from the imperial censor and officials, he vigorously defended his policy and creatively combined both regular and exceptional procedures that laid a significant foundation for the institutionalization of summary execution in the following century.

While the imperial centre initiated the eighteenth-century reform, the nineteenth-century reform primarily featured a regionalization of summary execution. This trend started in the latter half of the eighteenth century when the increased number of bandits, popular protests, and various types of local armed groups significantly changed the socio-political structure across the nation. The already overwhelmed judicial system encountered increased cases related to disputes and turbulence in which varied social groups were involved. The large criminal population eventually eroded local government’s judicial efficiency and fiscal condition. The Jiaqing emperor was forced to adjust the judicial system while resolving the problems left by the Qianlong period. Taking advantage of southeast piracy and the White Lotus rebels, the Jiaqing emperor

executed the Qianlong emperor's favourite official Heshen (和珅) and initiated a series of reforms. He continued to use the Grand Council to control local society and bureaucracy. He further introduced the capital appeal system (*jingkong* 京控) for the purpose of imperial control, at the same time creating a serious judicial backlog that eventually forced the governors to introduce new institutions to handle prisoners and clean up accumulated cases.

One of the most influential policies promoted during the Jiaqing reign was the re-strengthened collaboration between the state, regional authorities, and local militia (*tuan* 團 or *tuanlian* 團練). The Qing court relied extensively on militia in the suppression of the White Lotus rebels. In turn, this revitalized the existing process of what Philip Kuhn calls “local militarization.” In the following decades, the increasing social turmoil, emerging local powers, and continuously overwhelmed judicial system led to several reforms at the regional level. A large-scale reduction of procedures eventually took place during the Daoguang reign when local government could barely afford the expenses of prisoner transfers and judicial administration. During the devastating Taiping Rebellion (1850–1864), the law of summary execution was recognized by the imperial court and extended to all provinces. The local militia and braves (*yong* 勇) constituted the major forces of Qing troops, but the complex background and changing identity of these braves eventually posed a new challenge to the state. After the end of the Taiping Rebellion, the spread of men using force became an inevitable trend. The authorities continued to rely on braves in the battles against local revolts, but they also deemed the unorganized and drifting braves—usually called the “roaming braves” (*youyong* 游勇)—the main targets

of suppression. Throughout the dynasty, the Qing state continuously renewed the exceptional punishment of summary execution.

The rise of summary execution had changed the course of Chinese criminal justice ever since its initial boom. The militarized procedure not only created a space for authorities to manipulate judicial expediency and the politics of exception, but also allowed regional officials and local forces to participate in the practice of the death penalty, which, in theory, was a prerogative of the state. The extensive use of this extraordinary procedure in conjunction with the long-lasting practice of open execution by political regimes, local officials, militia, and even the masses strongly impacted the practice of the Chinese death penalty by shifting it toward a system where routinized and exceptional, centralized and decentralized, and formal and informal forces consistently negotiated judicial expediency and mutually shaped one another. More importantly, it reveals that a series of significant reforms predated the Westernization of law in the late nineteenth and early twentieth centuries—a historical event long perceived as the watershed in Chinese legal history that divided “tradition” and “modernity” in various realms of law. Whether or not its influence is positive or negative, the history of summary execution offers a distinct window for observing Chinese law and challenges the established wisdom about China’s “legal modernization.”

Economy of Punishment and Changes in Chinese Legal Culture

In order to assess the significance of summary execution not just in Chinese legal history but also in China’s transition from the “premodern” to the “modern” era, it is useful to use the term “economy of punishment” to describe the operation of this

exceptional penalty. When coining this term, I am inspired by the concept of “economy of violence” created by David Robinson, which excellently captures the presence of violence in the shaping of Ming society or, even broader, all Chinese society during the late imperial and modern times. According to Robinson, the “economy of violence” refers to “the administration or management of concerns and resources related to violence in society—when and why people resort to violence, licit or illicit, and how such actions are perceived.”⁵⁵ This concept particularly aims to locate the role of violence and its broad network in Chinese society. As Robinson argues, “illicit violence was an integral element of Ming society, intimately linked to social dynamics, political life, military institutions, and economic development” and “nearly everyone in China... grappled with the question of how to use, regulate or respond to violence in their lives.”⁵⁶ He focuses on the patronage network of violence among eunuchs, bandits, officials, and the emperor in mid-Ming Beijing—the political centre in a relatively peaceful period of the dynasty. Through this concept, he demonstrates that violence can be understood as a way of managing concerns or resources, and it should be linked to various non-violent sectors of society.

Although Robinson places his focus on the role of violence, the picture he paints of the patronage network of violence can help us understand how summary execution was linked with the broader context of Chinese society. On the one hand, the rise of the expedient punishment was primarily due to the crisis of the expanding empire. Namely, it was the growth of population, the expansion of the economy, the tension between the

⁵⁵ See David M. Robinson, *Bandits, Eunuchs, and the Son of Heaven: Rebellion and the Economy of Violence in Mid-Ming China* (Honolulu: University of Hawaii Press, 2001), 2.

⁵⁶ See Robinson, *Bandits, Eunuchs, and the Son of Heaven*, 2, 163.

monarch and bureaucracy, the emerging social class, and the overwhelmed judicial system that jointly contributed to the initial surge and subsequent epidemic of summary execution. The practice of hastened execution remained a prerogative of the sovereign. Yet the growing demand for such an extraordinary procedure was closely associated with the distribution of resources inside and outside of the established judicial system. On the other hand, it was the informal and expedient nature of summary execution that enabled it to drift between the licit and illicit spheres. The imperial court, the Board of Punishment, the provincial governors, and the participants in this punishment continuously defined and reinforced its exceptional status. Similar with the patronage network of violence described by Robinson, the practice of summary execution gradually linked elements in formal and informal, governmental and extra-governmental, and legal and illegal realms and eventually became a significant characteristic of society and various campaigns of bandit suppression—not just the judicial system within the government. The paradoxical combination of both extraordinariness and *de facto* routineness made the politics of expediency an increasingly significant part of Chinese legal culture. This marks a shift in Chinese law and requires us to reconsider its transformation before the Westernization of Chinese law.

In order to describe this process together with the role of summary execution in Chinese history, this dissertation puts forward the term, “economy of punishment,” to link the practice with broader socio-political contexts. Economy of punishment refers to the spread and distribution of penal resources related to crime and violence. With this term, I particularly place the operation of summary execution within the dynamics of law, politics, and the various realms of resource distribution. Similar to Robinson, I use this

term to look into *when* and *how* different *actors*—including the emperor, governors, local officials, militia, and local actors—negotiated the use of extraordinary punishment and extended the practice of the death penalty from the “formal” and “government” realm to all sectors within the society. The “penal resources”—a term I create here to describe the ways of structuring and legitimizing ideas, style, or sensibility regarding the penal system from a broad and diverse range of sources —operated beyond the boundary between formal and informal, regular and exceptional, and state and society. The economy of punishment that was built upon the spread of such resources thus comprised a significant aspect of Chinese legal development, in which centralization and de-centralization, routinization and the politics of exception, and state building and society making occurred concurrently and mutually shaped each other. In the end, as this study argues, it was such a dynamic and even contradictory operations of the economy of punishment that had an everlasting effect upon Chinese legal culture throughout the latter half of Qing dynasty and even after the introduction of Western laws and institutions. The rise of summary execution from the mid-eighteenth to the early twentieth centuries thus restructured Chinese legal culture by placing the operation of law on a dynamic basis in which competing sources of legitimation consistently shaped Chinese governance and society.⁵⁷

In fact, recent scholarship has reoriented the conventional approach towards unlawfulness and has reassessed the significant force of illegality. Other than the attention this subject receives due to its primal and controversial subject matter and the

⁵⁷ I want to thank Professor Kent Guy for his inquiries about “economy of punishment” and the suggestions about the revision of this concept. In my future revision turning this dissertation into a monograph, I will further develop this concept and incorporate all the valuable suggestions into my analysis while also exploring alternative ways of reframing the thesis and the concept.

important role that it played in the history of modern Chinese law and politics, the history of summary execution provides an interesting and unique case study for a field that has increasingly garnered attention, namely, the study of violence in Chinese society. Challenging the conventional view that tends to presume illicit force to be merely “deviance” or “disorder” while regarding the state’s violence as the embodiment of legal-political and orthodox order, recent studies note that various forms of violence had been “sanctioned” by both the state and ordinary people while illicit force had long been an integral component of Chinese society. In his work on violence in early China, Mark Lewis convincingly demonstrates that quite ample space has been provided for “sanctioned” violence within Chinese culture.⁵⁸ Barend ter Haar also outlines the various types of violence that remained largely sanctioned by literati themselves.⁵⁹ David Robinson further criticizes the conventional view that regarded violence as “deviance,” “threat,” or “disorder,” and argues that illicit force “was as much a part of the social order as it was a threat to that order.”⁶⁰ William Rowe’s observation fits particularly well in the case of summary execution. He points out that order (“men using force,” such as local strongmen and militia leaders) and disorder (often rather casually labelled “bandits”) existed in a “rough, negotiated equilibrium” and that criminals, rebels, and the modern

⁵⁸ Mark E. Lewis, *Sanctioned Violence in Early China* (Albany: State University of New York Press, 1990).

⁵⁹ See Barend J. ter Haar, “Rethinking ‘Violence’ in Chinese Culture,” in *Meanings of Violence: A Cross-Cultural Perspective*, ed. Göran Aijmer and Jon Abbink ed. (Oxford: Oxford University Press, 2000), 123–40.

⁶⁰ Robinson, *Bandits, Eunuchs, and the Son of Heaven*, 167.

era “class enemies” have “routinely been demonized in order for the bloody act visited upon them to be legitimated.”⁶¹

Previous studies on Chinese summary execution usually focus on the abuse of power in the practice of summary execution and rarely notice how the extended network of violence facilitated the rise of this institution. Most scholars regard this practice as a “barbaric and cruel institution.”⁶² Many attribute the flourishing of summary execution to the plight of China, in which overpowered governors and intensified warlordism plunged the Chinese people into dire suffering. Some scholars notice its complex context and its linkage with social unrest, political struggle, and financial constraints. Yet these scholars criticize its “lawlessness,” “arbitrariness,” and even “feudalist” characteristics, which hampered the judicial reforms in the early twentieth century.⁶³ Only a few scholars, particularly Suzuki Hidemitsu (鈴木秀光) and Thomas Buoye, have started to place summary execution in the broader context of the rise of informal punishments since the late eighteenth and early nineteenth centuries.⁶⁴ However, most scholars focus on the

⁶¹ William T. Rowe, *Crimson Rain: Seven Centuries of Violence in a Chinese County* (Stanford: Stanford University Press, 2007), 6–7.

⁶² See Li Guilian 李貴連, “Wan Qing jiudi zhengfa kao” 晚清就地正法考 (Summary Execution during the Late Qing Period), *Zhongnan zhengfa xueyuan xuebao* 中南政法學院學報 (Journal of Zhongnan University of Economics Law; also known as 法商研究 Studies In Law and Business) 1994, no. 1 (1994): 81. Many scholars have criticized Li’s thesis that summary execution originated during the Taiping Rebellion. Some scholars trace the origin to the late eighteenth and early nineteenth centuries, while others argue that summary execution dates back to at least the Ming dynasty.

⁶³ Xiaoqun Xu, *Trial of Modernity: Judicial Reform in Early Twentieth-Century China, 1901–1937* (Stanford: Stanford University Press, 2008); Zhang Shimin 張世明, “Qing mo jiudi zhengfa zhidu yanjiu” (shang) (xia) 清末就地正法制度研究(上)(下) (The Institution of Summary Execution during the Late Qing Period), *Zhengfa luncong* 政法論叢 (Journal of Political Science and Law) 2012, no. 1 (2012): 46–57 & 2012, no. 2 (2012), 59–70.

⁶⁴ Suzuki Hidemitsu 鈴木秀光, “Zhangbi kao: qingdai zhongqi sixing anjian chuli de yixiang kaocha” 杖斃考：清代中期死刑案件處理的一項考察 (Execution by Heavy Bamboo Strokes:

institutional and political contexts behind the rise of summary execution. Few have explored its correlation with a broader trend of social transformation, particularly the epidemic of men using force that either helped the state to suppress bandits or became the targets of summary execution. As a result, little is known about how such an exceptional institution was linked with Chinese society and the gradually expanding network of armed forces.

This dissertation intends to reorient this thesis regarding the function and role of summary execution in Chinese society. As this dissertation argues, during the eighteenth and nineteenth centuries, while the state extended its authority through the use of militarized judicial procedures, the emerging “wicked people” and men using force continued to prevail and challenged the state’s authorities. Due to the financial constraints and overwhelming banditry across the nation, the imperial centre and regional authorities adopted summary execution and relied on the *baojia* (保甲) local mutual-security system and militia to deter crimes and expel unlawful subjects. While the government feared its collaborating forces would join in banditry and rebellion, the patronage network of violence continued to fill gangs of orthodox and heterodox organizations. In essence, militia as an organization of local toughs and elites inevitably

A Study of Mid-Qing Capital Punishment Procedure), in *Shijie xuezhe lun zhongguo chuantong falü wenhua, 1644–1911* 世界學者論中國傳統法律文化 (Recent International Scholarship on Traditional Chinese Law), ed. Zhang Shiming, Thomas Buoye, and Na Heya 娜鶴雅, 209–34 (Beijing: Falü chubanshe, 2010); Suzuki Hidemitsu, “Cong danxin dang’an kan qingchao houqi xingshi shenpan zhidu de yiban” 從淡新檔案看清朝後期刑事審判制度的一斑 (A Preliminary Study on the Practice of Late-Qing Criminal Justice: From the Case of Danxin Archive), conference paper, Academic Conference for Danxin Archive, National Taiwan University, Taipei, July 15, 2008; Buoye, “Death or Detainment: The Dilemma of Eighteenth-century Chinese Criminal Justice.” For the development of summary execution in the Republican era, see Xiaoqun Xu, “The Rule of Law without Due Process: Punishing Robbers and Bandits in Early Twentieth-Century China,” *Modern China* 33, no. 2 (2007): 230–57.

encountered the problems of managing their own militants. Some militants drifted around and committed robbery with the weapons acquired from the militia. This, in turn, made the government continuously adopt severe punishments to eliminate the braves outside the legitimate organizations. In the end, the epidemic of men using force, the continued campaign against “heterodox” braves, the demand for efficient punishment, and the co-existence of “legal” and “illegal” elements jointly structured what I call the “economy of punishment.” The economy of punishment not only constituted an important response to the trend of local militarization but also shaped Chinese criminal justice by creating a space for authorities and various actors to manipulate judicial expediency, negotiate legality, and formulate a politics of exception.

Moreover, the concept of “economy of punishment” helps us understand how, with regard to the practice of summary execution, China transformed from the eighteenth century to the early twentieth century. To make this point clearer: while the long development of mid-and-late Qing history contains no less discontinuity than continuity, the evolution of *both* the practice of summary execution and the changing “economy of punishment” shows that the two trends were structurally linked together. One significant dimension of the summary execution reform during the eighteenth century was the re-distribution of judicial resources within the established judicial review procedure and the banishment system. The protracted judicial system was gradually unable to cope with the frequent revolts and protests in multiple localities within the vast empire. The Qianlong emperor did not want to loosen his control over the regional death penalty. The ways he adopted perfectly balanced the resources he possessed, while maintaining the imperial control through the use of the Grand Council and secret memorial. The summary

execution laws in the exile regions further reflected such logic—it was the ideas of making use of criminal labour and reducing the risk of “polluting” other non-exile regions that eventually led to the construction of the special legal zone. In this zone, escaping exiles were subject to summary execution, while the court leveraged the number of executions each year and continuously converted death sentences to banishment partly in hopes of developing uncultivated lands. The idea of “economy of punishment” was thus embedded in the punishment of “wicked people” and the reform of exile laws. To the ruler of such a huge empire, this was particularly important because the increased number of riots and judicial cases and the growth of convicts who were sentenced to death had left only limited space for the emperor to resort to the conventional approach.

During the nineteenth century, the idea of distributing penal resources became further significant because the increase in rebellion and piracy, the expanding power of regional authorities in the judicial realm, and the rise of local military organization all made the distribution of penal resources—if we take both “official” and “non-official” ones into account—increasingly fluid, changing, and negotiable. Among other factors, the suppression of “bandits” and “roaming braves” particularly reflected how the practice of summary execution was dependent on concrete situations. The target of suppression could be government soldiers this time and villains next time. The authorities feared the power of men who used force. But in actual practice, they adopted a paradoxical approach that combined both accommodation and suppression approaches in dealing with braves. The blurred boundary between “orthodox” and “heterodox” demonstrated how officials and local actors utilized the resources they had. The judicial practice was not aloof from the social and political context. The practice of summary execution was

further connected with dynamics at various levels, while both imperial center and regional authorities consistently negotiated the power of execution throughout the last decades of the Qing dynasty—which is also something we can perceive as a re-distribution of resources in judicial and political authority.

The term “economy of punishment” also builds a dialogue between China and other countries and extends our discussion of a global and comparative issue. During the late nineteenth and early twentieth centuries, when China underwent its largest campaign of rough justice, it was not alone because Europe, the United States, and various other nations encountered similar trends. In Europe and Latin America, popular justice and mobilized purges occurred while the states gradually established a monopoly on legitimate force. During the same period, the practice of lynching was popular in several regions in the United States, in which the masses summarily killed presumed criminals through extralegal measures. Recent studies of American lynching also challenge the perspective of American exceptionalism that narrowly defines lynching as an American practice.⁶⁵ This dissertation echoes this perspective by pointing out that the rise of Chinese rough justice constituted a parallel development in the history of violence around the globe. However, China’s case differed from its Western counterpart in that the ubiquity of men using force had become a significant element of the formal establishment and local governance. They were targets of the government’s suppression on some occasions, but they could also convert themselves to be members of the public service.

⁶⁵ See, for instance, Robert W. Thurston, *Lynching: American Mob Murder in Global Perspective* (Burlington: Ashgate, 2011); William D. Carrigan and Christopher Waldrep, eds., *Lynching in Global Historical Perspective* (Charlottesville: University of Virginia Press, 2013); Manfred Berg and Simon Wendt, eds., *Globalizing Lynching History* (New York: Palgrave Macmillan, 2011).

This was not particular to the nineteenth century. During the first half of the twentieth century, Chinese authorities also “soaked up” (*shoubian* 收編) illegal local forces, while the latter collaborated with other elements that may have had conflicts with the government. The highly eclectic nature of legal and illegal elements reveals a distinct process of Chinese state building and society making. Whether or not they were soldiers or bandits, their actions reverberated from one another and they each achieved legitimization throughout the process.⁶⁶

Sources and Outline

Since the practice of summary execution developed simultaneously at the level of the nation and local practice, this dissertation explores sources at both nation-wide and local levels. At the central level, this project explores various Qing central government archives, including the Grand Council Archives (*Junjichu dang* 軍機處檔, stored in the National Palace Museum *Guoli gugong bowuyuan* 國立故宮博物院 in Taipei), the Palace Memorial Archives (*Gongzhong dang* 宮中檔, stored in the National Palace Museum in Taipei), the Grand Secretariat Archives (*Neige daku dang'an* 內閣大庫檔案, stored at Academia Sinica), the Veritable Records of the Qing (*Qing shilu* 清實錄), and the Conspectus of Penal Cases (*Xing'an huilan* 刑案匯覽). This project was able to obtain some sources from the First Historical Archives of China, especially Grand

⁶⁶ The term “reverberate” is inspired by Paul Katz’s work. According to Katz, judicial ritual and other elements of legal culture mutually shaped a wide “judicial continuum” that contained different options for achieving legitimization and dispute resolution in Chinese society. See Paul Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (New York: Routledge, 2009), xi, 7, 47–60.

Council Copies of Palace Memorials (*Junjichu lufu zuozhe* 軍機處錄副奏摺). However, due to time limitations, this project has not comprehensively collected all the relevant records of Grand Council Copies of Palace Memorials. In the future, I will continue the collection work and incorporate the sources into this dissertation while revising it into a book manuscript.

At the local level, this dissertation particularly focuses on Zhejiang's primary sources. As one of the most prosperous provinces next to the metropolitan Shanghai area, Zhejiang Province has abundant sources regarding banditry, feuding, and rebellion in the late Qing period. The sources collected here offer precious local perspectives to the history of summary execution. Among the major sources here are local gazetteers. Many sources pertaining to bandit suppression and the operation of summary execution laws are discussed in chapter three and chapter four. In addition, some collections regarding the suppression of the Taiping Rebellion in Zhejiang are explored and analyzed. I also use personal memoirs, especially Duan Guangqing's (段光清) *Jinghu's Personal Chronicle* (*Jinghu zizhuan nianpu* 鏡湖自撰年譜), which provides valuable first-hand observations from a local official's perspective. During my source collection in Zhejiang, I obtained abundant sources from the Wenzhou Municipal Library, Wenzhou Municipal Archives, and Pingyang County Archives. A number of sources collected in these institutions reveal the practice of execution and bandit suppression in local society, including *Zhang Gang Diary* (*Zhang Gang riji* 張綱日記), *Six Years in Pingyang* (*Pingyang liu nian* 平陽六年), local newspapers, private and public documents from the Rare Book Department of Wenzhou Municipal Library, and the precious diaries by Zhang Gang and Liu Shaokuan (劉紹寬). These sources will be explored and incorporated into this study in future

revisions. In addition, this project utilizes newspapers and magazines, including *Shen Bao* (申報), *Chinese and Foreign Daily* (*Zhongwai ribao* 中外日報), *Dianshizhai Pictorial* (*Dianshizhai huabao* 點石齋畫報), *Eastern Miscellany* (*Dongfang zazhi* 東方雜誌), and *Law and Politics Magazine* (*Fazheng zazhi* 法政雜誌).

This dissertation is divided into five chapters. Each chapter represents a theme of summary execution in chronological order. All of these themes were closely associated with the “economy of punishment”—the core element of the rise of judicial expediency from the mid eighteenth century to the early twentieth century. The first chapter explores the roots of summary execution and the death penalty reviewing procedures in late imperial China. It first explores how dynastic rulers established the multitiered review procedure that restricted the power of both officials and the emperor. It then analyzes the creation of instant execution and the demarcation between intolerable crime and forgivable offence, together with the use of sacred items for preauthorized execution. The latter half of this chapter focuses on the history of three institutions particularly during the Ming dynasty: execution by flogging, the Shangfang Sword, and military law. The distinction between military justice and civilian justice was an important aspect of the pre-Qing legal system. As this chapter argues, all these procedures were institutionalized before the rise of summary execution while the Chinese state effectively controlled the penal system and restricted the possibility for people to resort to summary execution throughout the long late imperial period.

The second chapter examines the rise of summary execution during the Qianlong reign. It first discusses how the institution of preauthorized execution transformed during the Ming-Qing transition, particularly from the Ming institution of “banner plaque” to the

Qing institution of distinct summary execution procedure called “king’s order.” As this chapter argues, the gradual shift from banner-plaque to king’s order demonstrates how a preauthorized execution power was gradually taken back by the emperors, who used this procedure as an important instrument of judicial reform and bureaucratic communication. The chapter then discusses the campaign against the emerging underclass and demonstrators. The inefficiency of the protracted judicial review system enhanced the Qianlong emperor’s worries and forced him to extend the Ming punishment for “rootless rascals” to “wicked people,” particularly with the help of the Grand Council and imperial memorials. The battles against the “wicked people” shortened the judicial review procedure by summarily executing the leaders of offenses. To the imperial court, this approach was the most efficient one, given that the court had to balance the existing penal resources through the manifestation of the “economy of punishment.” The emperor also increased the use of secret memorials in order to avoid the procedure of routine memorials where the Board of Punishment had to carefully review each case. Yet the emperor had to face challenges from officials and defend the idea of judicial expediency. Moreover, even though this reform achieved the goal of speeding up the punishment of unruly subjects, it did not resolve the problems of the emerging underclass and the gradually overburdened judicial system. The Qing court even found it difficult to maintain the line between military justice and civilian justice and the introduction of military procedure to the practice of the death penalty eventually became an inevitable trend in the following century.

The third chapter explores the regionalization of summary execution during and after the Qianlong reign. The chapter focuses on four chronological stages of summary

execution law: the execution of deserting exiles, the reform of prisoner transfers, the local practice of summary execution during the Taiping Rebellion, and the development of guideline (*zhangcheng* 章程) and statutes (*li* 例) during the post-Taiping era. In the exploration of the execution of deserting exiles, this chapter argues that the Qing authorities constructed what I call a “zone of exception,” in which banished criminals were perceived as exceptional and subject to being executed anytime, following the logic that extreme punishment had already been “waived” and these convicts should not be pardoned again if they didn’t cherish the government’s leniency. On the other hand, the empire’s judicial system faced challenges from population growth and a flood of prisoners. The large-scale reduction of procedures eventually took place during the Daoguang reign, where banditry, robbery, and financial constraint problems forced the local government to request a change in the judicial system. The chapter then uses the story of Duan Guangqing to discuss the complex process of bandit suppression during the Taiping Rebellion. As this chapter argues, in the actual practice of summary execution, authorities from different levels and positions adopted different strategies and categories of execution. This practice was usually a product of political struggles and negotiations within the bureaucracy and local networks. Moreover, all these reforms at the regional justice system were closely related to the redistribution of penal resources. Both the imperial court and regional authorities deemed it necessary to reduce the cost of judicial resources and enhance the use of men of force and various kinds of suppression tools.

The fourth chapter focuses on the Qing suppression of “roaming braves” and the responses of society toward their punishment. As this dissertation argues, the extensive hunt for roaming braves had become a special war—a war that centered on the “economy

of punishment”—after the Taiping Rebellion. In this period, the search for this new social class had become more important than the laws against them. Both authorities and local militia eagerly sought for and arbitrarily killed roaming braves in an expedient manner. On many occasions, braves and vagrants were hurriedly killed because officials intended to cover up scandals or simply punish those who did not obey their commands. On the other hand, regional militaries constantly needed these braves to be a potential source of their soldiers. Local officials did not want local militia to execute the criminals excessively as they did in the civil war, but they also relied on these local armed groups to help detect and capture vagrants.

The fifth chapter explores the reports of the *Shen Bao* to analyze the formation of public deliberation on the procedure of quick execution. Most of the *Shen Bao* reports were similar to the official announcements, viewing such expedient punishment as a way to satisfy both people’s demand for justice and the ideals of strengthening state law and restoring order. Yet the reports at times sympathized with the victims, particularly in cases of wrongful judgment. Using a close examination of the Sanpailou Case (三牌樓, 1877), I find that the newspaper was primarily concerned about the discovery and punishment of the “real murderers” (*zhen xiong* 真兇), who, in this case, were the officials who intentionally incriminated innocent people and executed them on trumped-up charges. The newspaper was concerned about the roughness of the military procedure, but the journalists did not deny the significance of summary execution, particularly in the cases of banditry and serious homicide. After analyzing this case, the chapter uses the 1911 Ningbo riot to discuss how both government and society demanded quick justice and rejected the reform that bestowed legal rights on criminal defendants. It was such

sentiments and the government's demands that brought the practice into the reform period, when the practice of summary execution and the co-existence of legal and illicit forces continued to structure politics and legal culture in Chinese society.

Chapter 1: The Matters of Exception: Summary Execution before the Qing

Dynasty

Anyone who artfully speaks in order to misinterpret laws, arbitrarily changes names in order to alter the rules, and behaves aberrantly in order to disturb the politics shall be killed; anyone who produces wicked music, dress, rare skills, and implements in order to confuse others shall be killed; anyone who behaves deceitfully and defends his deception, speaks lies and defends his dishonesty, broadly learns all sorts of wrongs, and carries on misdeeds and then covers up these faults with pleasant appearances in order to confuse others shall be killed; anyone who makes use of ghosts and gods, tells fortunes using dates and times, and uses divination in order to confuse others shall be killed. These four types of capital crimes should be executed without further investigation and review. Anyone who commits these crimes and gathers the crowd is unforgivable. 析言破律，亂名改作，執左道以亂政，殺；作淫聲、異服、奇技、奇器，以疑眾，殺；行偽而堅，言偽而辯，學非而博，順非而澤，以疑眾，殺；假於鬼神、時日、蔔筮，以疑眾，殺。此四誅者，不以聽。凡執禁以齊眾，不赦過。— *Book of Rites*.⁶⁷

Like many historical polities, people in China had long employed capital punishment as an efficient tool for maintaining order and governing society. China used a wide array of methods to execute people for offences that were considered an intolerable threat to the state and society. However cruel these measures were, the death penalty reflected how regimes and society perceived serious crimes.⁶⁸ The taking of life embodied political symbolism as dynastic rulers imposed their expectations upon society

⁶⁷ Wang Meng'ou 王夢鷗 and Wang Yunwu 王雲五 eds., *Liji jinzhu jinyi* 禮記今注今譯 (Book of Rites with Contemporary Annotation and Translation), Volume 1 (Taipei: Taiwan shangwu yinshuguan, 1969), 239.

⁶⁸ For the meanings of crime and punishment in traditional China, see Klaus Mühlhahn, *Criminal Justice in China: A History* (Cambridge: Cambridge University Press, 2009), pp. 15–28.

members by eradicating outlaws.⁶⁹ Tormenting execution, including death by slow-slicing (*lingchi* 凌遲) and the supplemental punishments of disposal of the head (*xiaoshou* 梟首) and dispersal of remains (*lushi* 戮屍), had been used for most serious crimes for centuries.⁷⁰ It was thought that the evilness and hazard of a variety of capital offences warranted them being quelled severely and brutally. However, imperial China was not alone in the manipulation of cruel punishment and its deterrent effect. Western observers nowadays tend to perceive Chinese criminal justice as savage and despotic, but in the late eighteenth and the early nineteenth century Europeans' use of tormenting punishment was no less brutal and severe.⁷¹

From a long-term and comparative perspective, the major distinctive characteristics of pre-1800 Chinese criminal justice derived from its judicial review system. This was a multi-tiered procedure in which designations of capital crimes were

⁶⁹ For the meaning of the body in the practice of death penalty, see Timothy Brook, Jérôme Bourgon, and Gregory Blue, *Death by a Thousand Cuts* (Cambridge: Harvard University Press, 2008), chapter 2.

⁷⁰ Mühlhahn, *Criminal Justice in China*, 36–37.

⁷¹ For a brief history of torture and cruel punishment in Europe, see John. H. Langbein, “The Legal History of Torture,” in Sanford Levinson ed., *Torture: A Collection* (Oxford: Oxford University Press, 2004), 93-104; George Ryley Scott, *The History of Torture throughout the Ages* (London: Luxor Press, 1939), 35-101. In fact, despite the continued use of cruel punishment, Chinese jurists had consistently been devoted to the interpretation of law and the making of legal knowledge. For a classic analysis of legal reasoning in the *Conspectus of Penal Cases* (*Xing'an huilan* 刑案匯覽), see Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge: Cambridge University Press, 1967), 173-181. For a close analysis of legal writing and its association with politics and popular culture, see Robert E. Hegel and Katherine Carlitz ed., *Writing and Law in Late Imperial China: Crime, Conflict, and Judgment* (Seattle: University of Washington Press, 2009). For the Western imagination about the Chinese practice of death by slow-slicing and the Chinese critique of tormenting penalties, see Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 68–96, 152–242. For the development of legal Orientalism during the nineteenth century, see Li Chen, *Chinese Law in Imperial Eyes: Sovereignty, Justice, and Transcultural Politics* (New York: Columbia University Press, 2015); Teemu Ruskola, *Legal Orientalism: China, the United States, and Modern Law* (Cambridge: Harvard University Press, 2013).

reviewed and sanctioned by authorities at various levels and were eventually decided by the emperor. In some historical polities, monarchs possessed similar authority to trigger an investigation and decree capital cases. However, their bureaucratic review procedures were not as routinized and convoluted as in China.⁷² Also, while before the Roman Empire most European polities had not developed a clear boundary between criminal and non-criminal cases in judicial procedure,⁷³ the Chinese state had a multitiered judicial review procedure with the monarch's power of final decision since the Zhou dynasty (1046–256 BCE). In China, the monarch had continuously played an active role in criminal justice. Even as criminal cases increased due to imperial expansion and population growth, the emperors increasingly intervened in adjudication and took upon themselves the decision of criminal cases without delegating their burden to the bureaucracy.

In contrast, during the Ming and Qing dynasties, regional bureaucrats and central judicial administrators were tasked with conducting a thorough examination into each capital case. Although the increasingly routinized bureaucracy and judicial procedure prevented abuse of power in death penalty cases, the protracted and inefficient procedure eventually led to judicial crisis in the eighteenth century, which, according to various sorts of evidence, had a far-reaching impact on Chinese law and politics prior to the twentieth-century reform. In the end, the expanding empire, the demand for control of the society and the bureaucracy, and the under-resourced judicial system compelled Chinese

⁷² In the Roman Empire, for instance, the emperors at times intervened in adjudication of criminal cases while the majority of cases were delegated to judicial officers for investigation. See John Simpson, *A History of Continental Criminal Procedure*, trans. Adhémar Esmein (Boston: Little, Brown, and Company, 1913), 26–29.

⁷³ See Simpson, *A History of Continental Criminal Procedure*, trans. Esmein, 16–18, 23–26.

emperors to seek an effective solution. While the existing summary execution procedure was expedient before the eighteenth century, it gradually became an epidemic during the eighteenth-century reform and the nineteenth-century turmoil. To political regimes, summary execution became a useful instrument for political struggle, bandit suppression, and various campaigns against the regime's enemies. Nevertheless, because the mid-nineteenth century civil war dragged local militia into the war against what the authorities and locals deemed the "rebels," the death penalty for politically defined villains not only served as the regime's instrument but also became a common arena of popular sentiment and local politics. This trend continued even after the government undertook a series of "civilized" legal reforms, including the abolition of the slow-slicing death penalty and the introduction of a Westernized legal system.⁷⁴ While Chinese law gradually adopted a defendant-friendly procedure, the practice of summary execution, together with the bulky body of the special law system, continued to flourish and intensified the politicization and mobilization of capital punishment.

This chapter explores the roots of summary execution and the broader context of the death penalty reviewing procedure in late imperial China. The first section examines the development of the centralization of the death penalty. The death penalty was not monopolized by the Chinese state, although the central government in theory authorized its regional agents and administrations to execute convicts on behalf of the state. Tracing the development of both the pre-Qin era and the founding years of the imperial period, this section points out that the Chinese state gradually consolidated its authority through

⁷⁴ For the abolition of cruel punishments in China during the early twentieth century, see Jérôme Bourgon, "Abolishing 'Cruel Punishments': A Reappraisal of the Chinese Roots and Long Term Efficiency of the Xinzheng Legal Reforms," *Modern Asian Studies* 27.4 (2003): 851–862.

the centralization of the death penalty, including efforts to reduce summary execution at the regional level. The second section analyzes the creation of instant execution and the demarcation between intolerable crime and forgivable offence. Dynastic rulers invented a series of theories in order to get rid of discursive and seasonal restrictions. Such efforts were eventually legislated and became part of legal reasoning in the late imperial period. The third section discusses the symbols of preauthorized execution, which combined the practices of military action and death penalty. A variety of sacred items served the purpose of preauthorized execution, including hatchet (*fuyue* 斧钺), tally (*jie* 節), and sword. This section particularly discusses the use of preauthorized execution in late Ming politics, which eventually degenerated into abuse of power and intensified conflicts between the monarch and the bureaucracy. The fourth section discusses the evolution of execution by flogging. Throughout the imperial era, flogging was regarded as a light and convenient punishment. Yet it was also used as severe punishment in some periods. Some rulers allowed officials to beat convicts to death while retaining the informality of the punishment. As this section reveals, during the Ming dynasty, when the imperial centre significantly enhanced its control over the death penalty, execution by flogging also reached its peak as the emperors expediently used it to control society and bureaucrats. The last section examines military law and militarization of local organizations. As this section points out, the increasingly militarized local organizations had long possessed power of punishment within communities. Although they only had limited power of death penalty, local authorities at times tolerated the practice of communal capital punishment. All in all, the procedures analyzed here were institutionalized before the rise of summary execution, while the Chinese state effectively controlled the penal system

and restricted the possibility for people to resort to summary execution throughout the long late imperial period. The trend of militarization eventually accelerated the emergence of summary execution during the nineteenth century, when the state collaborated with social power in the wake of social upheaval.

Death Penalty and the Centralizing State

By the time the Chinese state stabilized its power of controlling regional adjudication, local authorities possessed the power of executing convicts without a prior permission from the center in the trial of various offenses. This does not refute the fact that the Chinese state consistently enacted its sovereignty over life and death. Except for some polities during the pre-Qin period in which regional states and tribes possessed high-level autonomy, central government in most instances reserved the power to decide the death penalty and remove local authorities' power to kill. What is intriguing here is the tension between different levels of authority. In both the earlier and the later imperial era, dynastic rulers were constantly concerned about crime control and governing stability. The death penalty had been long a source of tension between the state and regional authorities. Even though a centralized state had been established since the Qin dynasty (221–206 BCE), it was not until the middle of the imperial period that the state gained relatively comprehensive control over the use of the death penalty.⁷⁵

Chinese capital case review procedure had been in existence since the Zhou dynasty and was closely associated with a variety of ideas, including circumspection in

⁷⁵ Hu Xingdong 胡興東, *Zhongguo gudai sixing zhidu shi* 中國古代死刑制度史 (A Study of the Death Penalty System in Ancient China) (Beijing: Falü chubanshe, 2008), 152–161, 201–204, 225–230.

punishment, authority of the government, and the pursuit of cosmic harmony. Deterrence and retribution played a significant role in both official discourse and popular mentality, but it was also widely believed that intemperate killing would harm cosmic harmony and result in an imbalance in the natural order. The belief in the Mandate of Heaven (*tianming* 天命) and the fear of supernatural punishment gave rise to the idea of being “respectful to virtue and circumspect in inflicting punishments” (*mingde shenfa* 明德慎罰), which had been passed down from the Duke of Zhou to dynastic rulers and judicial officials.⁷⁶ Executions were generally restricted to non-flourishing seasons in order to conform to the trend of cosmic circumstances. Based on such ideas and the authority’s concern over the potential influence of death sentences, serious crimes in the Zhou dynasty (1046–256 BCE) had to go through careful investigation and multiple levels of adjudication, including those conducted by regional officers, the Minister of Justice, and eventually the Zhou king.⁷⁷ The king was required to examine carefully if there existed any of the three causes for pardon (*sanyou* 三宥) and to consult ministers, officials, and the populace—a procedure that was called “consultation with three kinds of people”

⁷⁶ Feng Zhuohui 馮卓慧, “Zhongguo gudai shenxing sixiang yanjiu: jian yu 20 shiji xifang shenxing sixiang bijiao” 中國古代慎刑思想研究—兼與 20 世紀西方慎刑思想比較 (Study on the Conception of Cautious Punishment in Ancient China—in Comparison with the Western Idea of Cautious Punishment in the Twentieth Century), *Falü kexue: Xibei zhengfa xueyuan xuebao* 法律科學：西北政法學院學報 (Science of Law: Journal of Northwest University of Political Science and Law), no.2 (2006): 144–63.

⁷⁷ Since the Zhou dynasty adopted what Feng Li calls the “delegatory kin-ordered settlement state,” legal cases outside the capital city were not under the direct surveillance of the Zhou king. As Yongping Liu notes, in both Western Zhou and Eastern Zhou dynasties, it was unlikely that a unified penal system existed and was universally applied to each state. See Yongping Liu, *Origins of Chinese Law: Penal and Administrative Law in Its Early Development* (Oxford: Oxford University Press, 1998), 127. For the Zhou dynasty’s central-regional political structure, see Feng Li, *Bureaucracy and the State in Early China: Governing the Western Zhou* (Cambridge: Cambridge University Press, 2012), 235–98.

(*sanci* 三刺).⁷⁸ Similar to the use of public execution as a spatial manifestation of authority,⁷⁹ regimes adopted these procedures as part of communication between the monarch, the bureaucracy, and the public. The complicated review procedure conveyed a message that the case had been carefully investigated, and human lives were not hastily ended. Sources reveal that Zhou officials frequently deferred executions so that the king or regional rulers could have ample time for cautious deliberation.⁸⁰ Even though it remains unknown if such procedure was strictly applied in each capital case, the idea of circumspection was retained in official statements and deeply embedded in the penal practices of later dynasties.⁸¹

With the centralization of the Chinese state, the decision to enact the death sentence gradually became the emperor's prerogative. Following the fall of the Zhou dynasty, whose delegatory political structure restricted central intervention to regional justice,⁸² the Qin-Han empires underwent a series of reforms that monopolized the monarch's power over the death penalty. Although on various occasions Qin and Han emperors allowed regional administrators to execute convicts without the court's

⁷⁸ Hu, *Zhongguo gudai sixing zhidu shi*, 118–22.

⁷⁹ For the spatial and communicative meanings of public execution in ancient China, see Mark E. Lewis, *The Construction of Space in Early China* (Albany: State University of New York, 2006), 161–63.

⁸⁰ Hu, *Zhongguo gudai sixing zhidu shi*, 120.

⁸¹ For example, the Kangxi emperor (1654–1722) frequently used the idea of circumspection in the decision of capital cases. See *Qing shilu* 清實錄 (Beijing: Zhonghua shuju, 1986), *Shengzu shilu*, 25: 351b, March 1, KX7 (1668; KX=Kangxi reign); *Qing shilu*, *Shengzu shilu*, 33: 448b, June 11, KX9 (1670); *Qing shilu*, *Shengzu shilu*, 80: 1024a, April 4, KX18 (1679).

⁸² See Li, *Bureaucracy and the State in Early China*, 235–98. Daniel Sou, on the other hand, argues that even during the Warring States period when the Zhou centre had largely lost control over the regional states, central authority could offer investigation into murder cases or other serious crimes when local government failed to demonstrate the ability to resolve the dispute. See Daniel Sou, “In the Government's Service: A Study of the Role and Practice of Early China's Officials Based on Excavated Manuscripts” (Ph.D. diss., University of Pennsylvania, 2013), 77–80.

permission,⁸³ the majority of capital cases were reported to the central judicial officer, the Chamberlain for Law Enforcement (*tingwei* 廷尉), for further adjudication and were later forwarded to the emperor to sanction execution.⁸⁴ The monarch possessed ultimate power over amnesty and death sentence because the entire centralization process embodied what Mark Lewis calls “the consolidation of a political structure centered on the person of the emperor.”⁸⁵ The abuse of power inevitably occurred in the imperial centre where there were no strong bureaucratic powers and stabilized rules that could restrict the power of the throne. When the power-checking mechanism was not fully established in criminal justice, even the throne did not have a clearly planned scheme for the design of the monarch-bureaucracy relationship in the judicial system.⁸⁶

One of the most significant reforms that routinized and normalized the dynamics between the throne and bureaucrats occurred during the Sui (581–619) and Tang (618–907) dynasties. This institution, called the procedure of “repeated memorials reporting the investigation of criminal cases” (*fuzou* 覆奏), was established by Sui and Tang emperors in order to prevent abuse of power in death penalty cases and to give the monarch ample time for contemplation, particularly in controversial cases. Emperor Taizong of Tang established the first comprehensive repeated memorial system after he

⁸³ Na Silu 那思陸, *Zhongguo shenpan zhidu shi* 中國審判制度史 (History of Chinese Justice System) (Tainan: Zhendian, 2004), 76, 93; Hu, *Zhongguo gudai sixing zhidu shi*, 158.

⁸⁴ Unlike the Zhou dynasty’s regional government, whose officials inherited titles through a hereditary system, the Qin and Han imperial centre preserved the power to appoint local officials and imposed mandatory reporting procedures upon the execution of the death penalty. See Hu, *Zhongguo gudai sixing zhidu shi*, 158–60.

⁸⁵ Mark E. Lewis, *The Early Chinese Empires: Qin and Han* (Cambridge: Harvard University Press, 2007), 1–2.

⁸⁶ Lawrence J.R. Henson, “China’s Imperial Bureaucracy: Its Direction and Control,” *Public Administration Review* 17, no. 1 (1957): 44–53.

killed the Assistant Minister of the Court of Judicial Review (*dalisi* 大理寺), Zhang Yungu (張蘊古), out of rage and suspicion.⁸⁷ The unfortunate official Zhang enraged the emperor because he remitted the death sentence of a man who criticized imperial politics. In his judgment, Zhang stated that the offender had mental illness, and this constituted diminished responsibility according to Tang law. The furious emperor, however, did not want to see any political dissident remain unpunished for such a reason. He heard from other officials that Zhang might have intended to flatter the convict's brother, who served as the Prefect of Zhang's hometown. He suspected that the lenient ruling regarding a criminal who showed scorn towards the emperor was out of such consideration, so he commanded the speedy execution of Zhang.

Taizong's impulsive decision prompted a crisis in the imperial legal system. Zhang Yungu and the judicial officials under his surveillance were required to adjudicate cases in accordance with the state's regulations and precedents. They followed a protracted and complicated process designed to ensure the application of laws and reduce potential arbitration. Taizong certainly possessed the ultimate power within the empire, but his excessive killing of the highest judicial officials revealed that even the throne would not thoroughly consider its own rules. After the execution of Zhang, Taizong quickly established the "repeated memorials reporting the investigation of criminal cases." The new reporting system required all death sentences outside the capital area to be reported to the throne three times prior to the execution. Death executions in the

⁸⁷ Liu Xu 劉昫 et al., *Jiu Tang shu* 舊唐書 (The Old Tang History) (Beijing: Zhonghua shuju, 1975), juan 50: 2139–2140; Ouyang Xiu 歐陽修 and Song Qi 宋祁, *Xin Tang shu* 新唐書 (The New Tang History) (Beijing: Zhonghua shuju, 1975), juan 56: 1409–1410.

capital area were close to the palace, so five reports were required.⁸⁸ Similar to the Zhou dynasty's "three consultations," this procedure aimed to prevent intemperate killing through increased communication between the monarch and the bureaucrats. Such procedure not only consolidated the emperor's power over the death penalty but also allowed the throne to instruct officials how to deal with adjudication. The increased comments from the bureaucrats prompted the throne to deprive bureaucratic authorities of their ability to question the emperor's decision. The imperial court also strengthened its control over regional justice through the strict requirement of a pre-execution report.⁸⁹ Although in the Song dynasty, the emperors frequently dismissed the rulings of central judicial officials, the repeated memorial procedure was maintained and continued to be practiced during the Yuan and Ming Dynasties.⁹⁰ During the Qing dynasty, the new channel of the Grand Council (*Junjichu* 軍機處) and extended memorial system further consolidated the emperor's surveillance of local affairs. Even though the increasingly standardized and detailed legal rules had restricted the emperor's discretionary power in the adjudication process, the review and reporting system had placed the emperor atop criminal justice and his opinion on each case significantly influenced future judicial practice.

Under such a centralized and multi-layered review system, criminal cases with different levels of severity received different levels of surveillance. The Ming-Qing criminal system required all "felony cases" (*zhong'an* 重案)—cases with sentences of exile, penal servitude, or the death penalty—to be reported to judicial officials higher

⁸⁸ Hu, *Zhongguo gudai sixing zhidu shi*, 483–84.

⁸⁹ Hu, *Zhongguo gudai sixing zhidu shi*, 485–86.

⁹⁰ Hu, *Zhongguo gudai sixing zhidu shi*, 486–89.

than the county magistrate. In the regular procedure, capital cases had to go through adjudication by the major central judicial authorities, particularly the Board of Punishment and the Court of Judicial Review.⁹¹ Cases with different circumstances fell into different categories; each allowed a distinct processing time and had varied complexities of reviewing procedure. The two major types of execution categories were *jianhou* and *lijue*. The former had to go through the Autumn Assize process (*qiushen* 秋審), which decided death sentences during the non-flourishing seasons of autumn and winter. The latter could be carried out in any season without being sent through the Autumn Assize process. Before the cases entered the annual Autumn Assize, officials reviewed and divided cases into four major categories for further review: cases in which the criminal offences were verified (*qingshi* 情實), cases with deferral circumstances (*huanjue* 緩決), cases with probability of receiving mercy (*kejin* 可矜), and cases having doubtful aspects (*keyi* 可疑).⁹² The classification enabled the emperor and judicial authorities to determine the pace at which to deal with each offence in accordance with its severity and investigation progress. On some occasions, the emperor commanded judicial officials to shift the category for certain types of criminal offences from a slower procedure to a faster one, usually from *huanjue* to *qingshi*, in order to deter similar crimes in the future.

⁹¹ For the procedure of Qing judicial review, see Na Silu, *Qingdai zhongyang sifa shenpan zhidu* 清代中央司法審判制度 (System of Justice at the Highest Level in Qing China) (Taipei: Wenshizhe chubanshe, 1992), 193–294.

⁹² Recent studies on the limits and politics of Autumn Assizes include Li Chen, “Regulating Private Legal Specialists and the Limits of Imperial Power in Qing China,” in *Chinese Law: Knowledge, Practice, and Transformation, 1530s to 1950s*, ed. Li Chen and Madeleine Zelin (Leiden: Brill, 2014), 84–123.

However, the detailed classification and the protracted reviewing process increased the burden on judicial authorities especially when the majority of capital cases were not immediately executed in the year they were tried. A large number of cases fell outside the category of *qingshi* and were left on the Autumn Assize reviewing list in the following years. Many convicts awaited final sentencing for years or even decades. Even in the *qingshi* process, some convicts were not checked (*goujue* 勾決) for execution until several years later.⁹³ The Autumn Assize procedure and the extension of the monarch's power in sentencing reinforced imperial control over capital crimes, but the heavily burdened criminal system resulted in a crisis of the entire bureaucracy. While population increase and economic expansion impacted the vast empire, only around twenty thousand bureaucrats were appointed to administer hundreds of millions of people.⁹⁴ What made things further complicated was the emerging rebellion, social unrest, and various "political crimes." All these factors challenged the efficacy of the centralized judicial review system and eventually forced the throne to take steps by the end of the eighteenth century.

Intolerable Crime and Undelayable Execution

While the Chinese state invested heavily in the establishment and operation of the judicial review system, it also created instant procedures for urgent and abominable

⁹³ As Thomas Buoye argues, lingering imprisonment in the county had become a de facto punishment for convicts who awaited final sentencing in the Qing dynasty. See Thomas Buoye, "Death or Detainment: The Dilemma of Eighteenth-century Chinese Criminal Justice," paper presented at the International Workshop on Chinese Legal History, Culture and Modernity, Columbia University, New York, May 4–6, 2012.

⁹⁴ Yang Zhimei 楊志枚 ed., *Zhongguo gudai guan zhi jian zuo* 中國古代官制講座 (Lectures on the Bureaucratic System of Ancient China) (Beijing: Zhonghua shuju, 1992), 420–21.

crimes. Several serious crimes were excluded from the regular investigation procedure, particularly under the categories of “instant execution without consideration for the season” (*budaishi* 不待時) and “instant execution without full adjudication” (*buyiting* 不以聽). In the Zhou legal system, *budaishi* crimes were divided into four types: misinterpreting laws and stirring up political struggles, producing wicked music and dress, deluding people and confusing truth, and confusing others using deities, ghosts, and divination.⁹⁵ These crimes were associated with what was viewed as dissident and heterodox elements, and thus were to be punished seriously. However, if regimes executed offenders in a prompt manner and in a season that was considered to be a harmonious and flourishing period, they needed reasonable grounds to legitimize the use of exceptional punishments.

One of the most common theories for this purpose was the idea of the Mandate of Heaven, through which the ruler in the mundane world obtained the power of rule and punishment from Heaven. Theorists of early Chinese rulership described that a ruler would receive punishment from Heaven and even be killed by hatchet if he did not recognize his destiny and overestimated his capabilities.⁹⁶ Such theories reinforced the need for instant execution, as the rulers were obliged to execute Heaven’s scheme. During the pre-Qin period, the theory that reconciled the rigid procedure of reviewing capital cases and the need for instant execution in urgent situations gradually took shape. According to the *Book of Documents* (*Shangshu* 尚書), the king in the human world can

⁹⁵ Hu, *Zhongguo gudai sixing zhidu shi*, 51–52.

⁹⁶ Ban Biao (班彪, 3–54 AD), in his influential work “Essay on the Ruler’s Mandate” (*Wangming lun* 王命論), also mentioned this point. See Xiao Tong 蕭統, *Wenxuan* 文選 (Selections of Refined Literature) (Shanghai: Shanghai guji, chubanshe, 1986 reprint), 2263–65.

execute the “heavenly punishment” (*tianfa* 天罰) for serious crimes. Kong Yingda (孔穎達) in his interpretation of “heavenly punishment” linked the concept with the “mandate of king” (*wangming* 王命):

The officers follow the King’s order and carry out the execution by the King. This means they kill the lascivious and evil convict but establish his virtuous heirs [without terminating his family line]. 奉王命行王誅，謂殺淫湎之身，立其賢子弟。⁹⁷

Apparently, the Mandate of Heaven not only meant that the rulers were granted the right to rule. It also suggested that the rulers were obliged to execute vicious criminals on behalf of Heaven. While such an obligation had reinforced the ultimate power of the rulers, it was closely associated with the popular imagination about justice. As Paul Katz asserts, Chinese legal culture embodied what he terms a “judicial continuum” in which “a holistic range of options for achieving legitimization and dispute resolution” co-existed and influenced one another.⁹⁸ The idea of the Mandate of Heaven provided a theoretical foundation for the death penalty in the mundane world. No records reveal how fast the

⁹⁷ Kong Anguo 孔安國 (zhuan) and Kong Yingda 孔穎達 (zhengyi), *Shisanjing zhushu: shangshu zhengyi* 十三經注疏: 尚書正義 (Commentary on the Thirteen Classics: Correct Interpretation of the Book of Documents) (Shanghai: Shanghai guji chubanshe, 2007), juan 7, 275; Ruan Yuan 阮元, *Chongkan songben shisanjing zhushu fu jiaokan ji* 重刊宋本十三經注疏附校勘記 (The Reprinted Edition of Song Commentary on the Thirteen Classics with Notes of Emendation) (Taipei: Yiwen yinshuguan, 1965 reprint), 104a-104b.

⁹⁸ Paul Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (London and New York: Routledge, 2009), 7, 47–60; Paul Katz and Jérôme Bourgon, “Swearing down the Law – A Debate,” *The China Beat*, <http://www.thechinabeat.org/?p=3653>, retrieved from the web on June 30, 2016.

“execution by the King” was carried out in actual cases, but the authorities could not keep the prisoners for long because they had described the offence as heinous and monstrous.

Among others, the offences of treason, rebellion, and even failure to observe astronomy for the royal house were to be punished severely.⁹⁹ In early China, military attacks (*jiabing* 甲兵) warranted the most serious punishment (*daxing* 大刑) used in the suppression of rebellious tribes and unruly officials.¹⁰⁰ The concepts of military (*bing* 兵) and punishment (*xing* 刑) were overlapping and interchangeable. The hatchet was also one of the serious punishments, ranked at the level next to military suppression.¹⁰¹ It was closely associated with both military laws and villain suppression, and classics described that “[a military commander’s] orders should be as sharp as a hatchet and as keen as the Ganjiang Sword” (*ling ru fuyue, zhi ru ganjiang* 令如斧鉞, 制如干將).¹⁰² In theory, cases involving political struggles and even treasonous activities were to be adjudicated and punished by the monarch.¹⁰³ However, in some in urgent situations, central government was unable to respond to the crisis immediately. Regional authorities at times carried out the punishment by “respectfully invoking the king’s authority of executing criminals” (*sujiang wangzhu* 肅將王誅), not only for the interest of the

⁹⁹ The passage cited above from the *Commentaries of the Book of Documents* referred to the execution of astronomy observing officer Xihe (羲和) who was ordered to be killed for his failure to observe astronomy.

¹⁰⁰ Ruan, *Chongkan songben shisanjing zhushu fu jiaokan ji*, 473a–474a.

¹⁰¹ See, for instance, Ban Gu 班固, *Xin jiaoben hanshu jizhu bing fubian erzong* 新校本漢書集注并附編二種 (New Annotated Edition of the History of the Former Han Dynasty with Commentaries and Two Appendices) (Taipei: Dingwen shuju, 1986 reprint), zhi, juan 23, 2464–65.

¹⁰² Liu Zhongping 劉仲平 ed., *Weiliaozi jinzhu jinyi* 尉繚子今注今譯 (Weiliaozi with Contemporary Annotation and Translation) (Taipei: Taiwan shangwu yinshuguan, 1984), 276.

¹⁰³ Hu, *Zhongguo gudai sixing zhidu shi*, 51–52.

political centre but also for various political and security concerns.¹⁰⁴ Regardless of the strategy behind claiming the authority of Heaven or King, the instant executions by regional authorities reconciled the immediacy and severity of punishment, particularly during the time when the political centre had not fully controlled judicial authority at the regional level.

During the imperial period, a critical issue in the use of instant execution was to incorporate it into the newly promoted Confucian ideology and the continued philosophy of natural harmony. Since both Confucianism and natural harmony were considered important elements of imperial rule, dynastic rulers had to be cautious lest the execution of policies result in inconsistency of various political thoughts. After the Han dynasty established Confucianism as the state ideology, Dong Zhongshu (董仲舒; ca.179–104 BCE or fl. 195–105 BCE),¹⁰⁵ one of the theorists who integrated cosmology and Confucianism, argued that the practice of *budaishi* did not necessarily contradict the will of Heaven:

Heaven does not merely nourish people in spring and kill people in autumn. Instead, it gives life to those who should live and death to those who should die and it never waits until specific seasons. In ruling a country, how can one defer what he should do and wait for another time in four seasons? ... Furthermore, when Heaven intends to benefit people, it

¹⁰⁴ Ruan, *Chongkan songben shisanjing zhushu fu jiaokan ji*, 98b–99a.

¹⁰⁵ Most scholars adopt 179–104 BCE as Dong's birth and death dates. Recent scholars started to challenge this idea. For a lengthy discussion about Dongs dates, see Sarah A. Queen, *From Chronicle to Canon: The Hermeneutics of the Spring and Autumn according to Tung Chung-shu* (Cambridge: Cambridge University Press, 1996), 241–248.

not merely grows the crops [but also removes the weeds]. It never waits to remove the weeds, let alone the villains. 天非以春生人，以秋殺人也，當生者曰生，當死者曰死，非殺物之義待四時也，而人之所治也，安取久留當行之理而必待四時也。...且天之欲利人，非直其欲利穀也，除穢不待時，況穢人乎。¹⁰⁶

While the practice of carrying out execution in autumn and winter continued in the Chinese legal system, Dong's re-interpretation of Heaven's will helped regimes to escape the trap of natural harmony and the Confucian idea of the ruler's virtue. Dynastic rulers enjoyed the power of instant execution despite the criticism from officials, particularly in cases of rebellion and misconduct within the military. Emperors at times challenged the thesis of natural harmony and criticized officials who intended to stop their practice of instant execution. In the Sui dynasty, for example, the Emperor Wen (557–602) wanted to execute a criminal in June. The Deputy Chief Judge of the Supreme Court Zhao Chuo (趙綽) warned the emperor that no one could be executed during the growing seasons. The emperor said,

Although June is a growing season, there must be thunder during this month. Now that Heaven can express his wrath during a hot season, why

¹⁰⁶ Dong Zhongshu 董仲舒, *Chunqiu fanlu jinzhū jinshi shiqi juan* 春秋繁露今注今譯十七卷 (Luxuriant Dew of the Spring and Autumn Annals with Contemporary Annotation and Translation: 17 juan) (Taipei: Taiwan shangwu yinshuguan, 1987), 436–37. For the cosmological thoughts in Dong Zhongshu's *Chunqiu fanlu* and its integration to Confucianism, see Kung-chuan Hsiao, *A History of Chinese Political Thought Volume One: From the Beginnings to the Sixth Century A.D.*, trans. Frederick W. Mote (Princeton: Princeton University Press, 1979), 484–503.

can't I execute a criminal following Heaven's rule? 六月雖曰生長，此時必有雷霆。天道既於炎陽之時，震其威怒，我則天而行，有何不可。

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The scope of instant execution was not restricted to political crimes and military misconduct. Ever since the pre-Qin period, lack of filial piety and disrespect to superiors had been viewed as intolerable crimes.¹⁰⁸ Roughly since the sixth century, some of the “ten greatest wrongs” (*shi'e* 十惡 or “ten abominations”) and offences against senior relatives were crimes for which execution was permitted in any season. According to Tang law, those committing rebellion, great sedition (*dani* 大逆), treason (*moupan* 謀叛), or contumacy (*e'ni* 惡逆), and slaves and maidservants who murdered their masters could be executed from the beginning of spring to the autumnal equinox. While other capital cases were granted up to three “repeated memorials” for careful review, these crimes went through only one memorial before execution.¹⁰⁹ The imperial centre rarely granted amnesty from execution in these cases. When amnesty was granted, the punishment was

¹⁰⁷ Wei Zheng 魏徵 et al., *Xin jiaoben Suishu fu suoyi* 新校本隋書附索引 (New Annotated Edition of the History of the Sui Dynasty with Index) (Taipei: Dingwen shuju, 1980), 710.

¹⁰⁸ Huang Zhen 黃震, “Xizhou xiaodao yu panli jingshen” 西周孝道與判例精神 (The Spirit of Filial Piety and Precedent in the Western Zhou Dynasty), *Falishi lunji* 法律史論集 (Studies on Chinese Legal History), vol. 4 (Beijing: Falü chubanshe, 2002), 204–13.

¹⁰⁹ Niida Noboru 仁井田陞, *Tang ling shiyi* 唐令拾遺 (An Interpretation of Tang Dynasty Orders), trans. Li Jin 栗勁 (Changchun: Changchun chubanshe, 1989), 692–93, 698; Wallace Johnson, *The T'ang Code: Volume I, General Principles* (Princeton: Princeton University Press, 1979), 17–22.

usually converted to permanent exile to a remote area.¹¹⁰ On the other hand, despite the accelerated procedure in adjudication and execution, serious offences received multiple reviews from the regional level to the centre. Except for those killed in battles or concealed by local officials, the imperial centre imposed strict control over extreme punishment and the reviewing process for heinous crimes.

The greatest wrongs listed above were all intolerable in rulers' eyes, but after the long practice of amnesty and judicial analogy, regimes found it necessary to redefine the most intolerable crimes and exclude some capital crimes from instant execution. The concept of "true capital crimes" (*zhenfan sizui* 真犯死罪) was thus created, referring to crimes that could not be amnestied or punished lightly. In contrast to true capital crimes were "miscellaneous capital crimes" (*zafan sizui* 雜犯死罪), which were usually amnestied after judgment.¹¹¹ In the Tang dynasty, the true capital crimes included ten great wrongs, intentional murder, rebellion, kidnapping, and banditry. In the Ming dynasty (1368–1644), the category of true capital crimes was further divided into execution in autumn and execution at any time while the miscellaneous capital crimes offenders were rarely sentenced to death.¹¹² During the late Ming, the distinction between *lijue* and *jianhou* gradually took shape and became a formal distinction of capital cases in

¹¹⁰ Chen Junqiang 陳俊強, *Huang'en haodang: huangdi yongzhi de ling yi mian* 皇恩浩蕩：皇帝統治的另一面 (Infinite Royal Graciousness: The Other Side of an Emperor's Reign) (Taipei: Wunan, 2005), 263–68.

¹¹¹ Yonglin Jiang, *The Great Ming Code: Da Ming lü* (Seattle: University of Washington Press, 2004), lxxiv. For the concept of "zhenfan," see Hu, *Zhongguo gudai sixing zhidu shi*, 58–65; Zhang Guanghui 張光輝, "Zhongguo gudai 'zafan sizui' yu 'zhenfan sizui' kaolue" 中國古代"雜犯死罪"與"真犯死罪"考略 (Study on "True Capital Crimes" and "Miscellaneous Capital Crimes" in Ancient China), *Shangqiu shifan xueyuan xuebao* 商丘師範學院學報 (Journal of Shangqiu Normal University) 25, no. 2 (2009): 108–12.

¹¹² Hu, *Zhongguo gudai sixing zhidu shi*, 58–65.

the Qing dynasty.¹¹³ The Qing government created a complicated classification system for the procedure of the Autumn Assize, through which central officials determined the speed of execution and the need of suspension by the degree of severity and the context of each criminal case.

The detailed classification restricted the arbitrariness of either the granting of amnesty or the use of instant execution. As Brian McKnight points out, Ming-Qing rulers reduced the use of amnesty not only because of the statutory restriction but also due to the state's increased dependency upon the semi-official dispute resolution mechanism.¹¹⁴ Regardless of the varied strategies behind the use of punishment and the manipulation of judicial administration, the Ming-Qing rulers had established a set of statutory standards for forgivable and unforgivable cases. On the other hand, the statutory restriction did not guarantee strict application of law as the government increasingly delayed and terminated the sentences through the use of miscellaneous capital crimes or the practice of suspended execution. The emperors continued to manipulate the idea of benevolence as an effective instrument of reinforcing their image as the Son of Heaven,¹¹⁵ but they also strictly punished heinous crimes through tormented execution, *lijue*, or military suppression. It was not until the eighteenth century when the empire encountered increased social unrest and an overburdened judicial system that the criminal justice

¹¹³ Hu, *Zhongguo gudai sixing zhidu shi*, 64–67.

¹¹⁴ Brian E. McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu: University Press of Hawaii, 1981), chapters 5–6.

¹¹⁵ The use of amnesty was also closely related to local governance and the suppression of bandits. As Frederic Wakeman points out, selective amnesties were as effective as weapons and the distinction between bandits and good people was usually dependent on the government's strategies. See Frederic Wakeman Jr., *The Great Enterprise: The Manchu Reconstruction of Imperial Order in Seventeenth-Century China*, vol. 2 (Berkeley: University of California Press, 1985), 712–14.

became further militarized, and the summary execution system was established for the most intolerable crimes.

Tally, Sword, and Banner: The Authorization of Execution

While the imperial centre gradually standardized the procedure of the death penalty, in some urgent situations, particularly in cases where the monarch and central officers would not be able to review the case immediately and decide the sentence, a prompt reaction such as “executing criminals on the spot without prior approval from the imperial court” (*xian zhan hou zou* 先斬後奏) and a range of militarized measures were considered a priority. Since such extraordinary procedure intervened in the monarch’s prerogative over the death sentence, most dynastic rulers did not grant perpetual power for unlimited killing. The imperial centre exerted strict control over the operation of such authority, while at the same time it relied on this institution to extend its reach to the farthest locality. This control was further strengthened during the Qing dynasty, because the extended memorial system enabled the centre to communicate with regional authorities in a prompt manner. The officials designated to execute criminals on the spot were usually required to submit a report before each action. Even though preauthorized execution at times resulted in abuse of power and political struggle, in general the operation of extraordinary procedure helped regimes to extend imperial authority and restore order after severe revolts and social unrest.

To reinforce the legitimacy of this system, Chinese monarchs created a number of symbols representing the power to take life under exceptional circumstances. Several items were used for this purpose, including the hatchet (*fuyue* 斧鉞), which had been widely used as a ceremonial staff during the pre-Qin period. As with the sceptre in

Western history, the hatchet carried sacred meanings and represented the power of the royal house. It was not only a weapon on the battlefield but also a symbol of military leadership.¹¹⁶ Records reveal that the image of the hatchet had been linked with the idea of the Mandate of Heaven and the strengthening of state power. The kings usually bestowed a hatchet on the military commander before each expedition. The granting ceremony generally took place in the royal shrine, where monarchs worshipped their predecessors and manifested the legitimacy and authority of the dynasty.¹¹⁷ The campaigns, through which the regime punished outlaws on behalf of Heaven, were usually in the name of suppressing villains.¹¹⁸

In theory, anyone who possessed a hatchet or certain other kinds of sacred weapons had the prerogative of killing (*zhuansha* 專殺). According to the *History of the Former Han Dynasty*, Emperor Wu of Han once assigned a Imperial Censor (*yushi* 御史; including Regional Inspector *cishi* 刺史) to carry a hatchet in the suppression of bandits and negligent officers.¹¹⁹ The procedure was essentially a militarized one, being called “the action in militarized manners” (*junxing congshi* 軍興從事). A hatchet was not

¹¹⁶ For the symbolic meanings and archeological discoveries of hatchets, see Qian Yaopeng 錢耀鵬, “Zhongguo gudai fuyue zhidu de chubu yanjiu” 中國古代斧鉞制度的初步研究 (A Preliminary Study on the Hatchet System in Ancient China), *Kaogu xuebao* 考古學報 (Acta Archaeologica Sinica), no.1 (2009): 1–34. Qian argues that the growing number of discoveries of hatchets in ancient noblemen’s tombs suggests that the hatchet was used not only as a weapon but also as a symbol of the monarch and prestigious officers.

¹¹⁷ Qian, “Zhongguo gudai fuyue zhidu de chubu yanjiu,” 16–18, 21–24.

¹¹⁸ In practice, military generals usually made an oath after receiving an imperial hatchet, claiming that the expedition was on behalf of Heaven. See Zhongguo bingshu jicheng bianweihui 中國兵書集成編委會, *Zhongguo bingshu jicheng* 中國兵書集成 (Collection of Chinese Military Writings) (Beijing: Jiefangjun chubanshe, 1987), vol. 3, *Wujing zongyao qianji* 武經總要前集 (Collection of the Most Important Military Techniques: The Former Collection), 214–15.

¹¹⁹ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, liezhuan, juan 66, 2887.

necessarily present as it was primarily a symbol rather than an actual execution instrument,¹²⁰ but since the inspector conducted the tour of inspection in the name of the emperor, the classics usually depicted that the inspector had been granted the symbol of the hatchet.¹²¹ After the Zhou dynasty, the hatchet became one of the “nine bestowments” (*jiuci* 九賜 or *jiuxi* 九錫) granted to the most outstanding officials.¹²² Other sacred rewards included the famous Shangfang Sword (*shangfang jian* 尚方劍, 上方劍, or *shangfang baojian* 尚方寶劍; also known as *zhanma jian* 斬馬劍 and *duanma jian* 斷馬劍, literally “Horse-Splitting Sword”), whose name derived from the Qin-Han officials manufacturing palace commodities and weaponries.¹²³ In early China, the sword was a symbol of personal prestige and social status. The swords made by the imperial manufacturer represented the authority of the royal house and were usually called imperial swords (*yujian* 御劍). After the Han dynasty, emperors granted imperial swords, the hatchet, the banner (*jing* 旌), and tally to officials and military officers empowering them to execute criminals on behalf of the emperors.¹²⁴ While military commanders

¹²⁰ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzong*, benji, juan 10, 314.

¹²¹ Ma Duanlin 馬端臨, *Wenxian tongkao* 文獻通考 (Comprehensive Examination of Literary and Documentary Sources) (Taipei: Taiwan shangwu yinshuguan, 1987 reprint), 832b–833a.

¹²² Zhou Tianyou 周天游, *Bajia houhanshu jizhu* 八家後漢書輯注 (Collected Annotations of the Eight Commentators to the History of the Later Han) (Shanghai: Shanghai guji chubanshe, 1986), benji, juan 9, 387.

¹²³ Zhou, *Bajia houhanshu jizhu*, liezhuan, juan 78, 2513. During the Sui and Tang Dynasties, a new type of long sword called *modao* (陌刀) became a popular weapon on the battlefield. According to the Six Statutes of the Tang dynasty (*Tang liudian* 唐六典), *modao* derived from the ancient Horse-Splitting Sword. See Li Linfu 李林甫, *Tang Liudian* 唐六典 (The Six Statutes of the Tang Dynasty) (Beijing: Zhonghu shuju, 1992), 457.

¹²⁴ Zhongguo bingshu jicheng bianweihui, *Zhongguo bingshu jicheng*, vol. 3, *Wujing zongyao qianji*, 725; Li Tao 李燾, *Xu zizhi tongjian changbian* 續資治通鑒長編 (Extended Continuation to the Comprehensive Mirror in Aid of Governance) (Beijing: Zhonghua shuju, 2004), 852–53,

fought for and killed villains for the sovereign, they needed these items to legitimize their authority or the court officials and subordinates might suspect their motives for quick executions.

In this sense, the sword and hatchet were not merely to kill enemies but also to establish the commander's authority throughout an expedition. According to the *Collection of the Most Important Military Techniques* (*Wujing zongyao* 武經總要) published in 1044, Emperor Wu of Liang (464–549) bestowed a dragon-carved defending sword (*longhuan yudao* 龍環御刀) on the expedition general Wei Rui (韋叡), commanding Wei to kill any unruly subordinate with this sword so that the soldiers will listen to his words.¹²⁵ In the Song dynasty, the military general who possessed the Shangfang Sword could execute deputy generals or lower officials if they did not obey his command.¹²⁶ In literature and drama, some symbolized items, particularly the privilege sword (*shijian* 勢劍) and gold plaque (*jinpai* 金牌), were also depicted as instruments that killed treacherous officials.¹²⁷ The famous Imperial Advisor of the Ming dynasty Liu Ji (劉基, 1311–75) argued that an enlightened emperor should find an able and trustworthy official and “bestow him a Shangfang Sword so that he could follow the

1255; Tuotuo 脱脱 et al., *Xin jiaoben Songshi bing fubian sanzong* 新校本宋史并附編三種 (New Annotated Edition of the History of the Song Dynasty with Three Appendices) (Taipei: Dingwen shuju, 1980 reprint), 9487.

¹²⁵ Zhongguo bingshu jicheng bianweihui, *Zhongguo bingshu jicheng*, vol. 4, *Wujing zongyao houji* 武經總要後集 (Collection of the Most Important Military Techniques: The Latter Collection), 1193–94.

¹²⁶ Zhongguo bingshu jicheng bianweihui, *Zhongguo bingshu jicheng*, vol. 3, *Wujing zongyao qianji*, 725.

¹²⁷ See Wu Xiaoling 吳曉鈴 ed., *Guan Hanqing xiquji* 關漢卿戲曲集 (A Collection of Guan Hanqing's Opera) (Beijing: Zhongguo xiju chubanshe, 1958), 751–52, 863, 868; Ning Xiyuan 寧希元 ed., *Yuankan zaju sanshi zhong xinjiao* 元刊雜劇三十種新校 (New Annotation of Thirty Yuan-edition Zaju Dramas) (Lanzhou: Lanzhou daxue chubanshe, 1988), 49, 55.

law and kill the disloyal and treacherous persons” (*xian feng shangfang jian, an fa zhu jian zang* 先封尚方劍, 按法誅奸賊).¹²⁸

However, most of the time the Shangfang Sword was either a token of the sword bearer’s prestige and political status or a psychological projection of retribution and final justice. Many emperors feared that the sword will become an instrument for political struggle. As a result, they would appear careful when listening to advice to kill bandits or officials. In 1270, for instance, a rebellion broke out and officials urged the emperor to bestow the power to execute bandits and rebels on the military commander and local authorities. The ruler, Kublai Khan, had rewarded officials a Shangfang Sword several times, but he rejected the advice to practice preauthorized execution as he worried that it might result in indiscriminate killing.¹²⁹ While dynastic rulers intended to seize the power of killing in cases of banditry and rebellion, many were also aware that the authorization might involve them in political struggles. During the Jingnan Campaign (1399–1402) under the Ming dynasty, the military admiral Li Jinglong (李景隆) failed critical battles and retreated to the capital. The outraged ministers roared in the palace and asked the Jianwen emperor to execute Li, but the emperor did not adopt their advice. One frustrated official, Huang Zicheng (黃子澄), who recommended Li as the expedition general, wrote a poem after this incident, saying that “our institution has Shangfang Sword, but we have no idea where to borrow it. We could only cry to the Heaven, crying so hard that our hat almost fell off” (*shangfang you jian ping shui jie, ku xiang cangtian ji duo guan* 尚方有

¹²⁸ Liu Ji 劉基, *Liu Ji ji* 劉基集 (Collected Works of Liu Ji) (Hangzhou: Zhejiang guji chubanshe, 1999), 348–49.

¹²⁹ Song Lian 宋濂 et al., *Xin jiaoben Yuanshi bing fubian erzhong* 新校本元史并附編二種 (New Annotated Edition of the History of the Yuan Dynasty with Commentaries and Two Appendices) (Taipei: Dingwen, 1981 reprint), 3758–59.

劍憑誰借，哭向蒼天幾墮冠。¹³⁰ He may have risked his career by suggesting the execution of his colleague. On many other occasions, the emperor would not allow the officials to intervene in the decision over killing. To the throne, immediate execution was a double-edged sword. It could quickly satisfy popular expectation and eliminate the enemies of the imperial court. It could also give rise to unruly officials and intensify the tensions within the ruling class.

The tension over the death penalty became increasingly visible in the Ming dynasty, particularly due to the legacies left by its founder, Zhu Yuanzhang (朱元璋, Hongwu emperor; 1328–98). As a peasant-turned-emperor who learned the lessons of political factionalism from the fallen Yuan Empire, Zhu had a deep distrust of officialdom and local gentry. His fear eventually led to the notorious killing of Prime Minister Hu Weiyong (胡惟庸) and the abolition of the post of prime minister. He initiated a secret police system and enacted a series of exceptional regulations against corrupt and disloyal officials, particularly stipulated in his Great Pronouncements (*Dagao* 大誥).¹³¹ Such a reform facilitated the consolidation of the emperor's power, but it also created a serious crisis that eventually intensified opposition among bureaucrats, ministers, and the emperor. While political factionalism escalated in the latter half of the Ming dynasty, the Shangfang Sword became a discursive instrument in political struggle. In 1567, Grand Secretariat Gao Gong's (高拱) follower Qi Kang (齊康) strongly criticized Xu Jie (徐階) for his corruption and disrespect toward the former emperor. The

¹³⁰ Jiao Hong 焦竑, *Guochao xianzheng lu* 國朝獻徵錄 (Records of Our Dynasty's Offered Testimonies) (Taipei: Mingwen shuju, 1991), (112)507a–(112)507b.

¹³¹ Brook, Bourgon, and Blue, *Death by a Thousand Cuts*, 102–15.

outraged supporters of Xu condemned Qi and Gao as “bandits.” Some of them even requested a Shangfang Sword from the throne in order to kill Gao. The Longqing emperor rejected the request but demoted Gao in order to quiet the rage.¹³²

The court politics during this period had gradually become uncontrollable, but the use of the Shangfang Sword was still in words only. It was not until the Wanli reign (1573–1620) that the sword appeared in actual practice. At that time, the relationship between the throne and the bureaucracy deteriorated to the extent that the Wanli emperor eventually refused to meet his ministers and read any reports sent to him. The Shangfang Sword intriguingly appeared during the emperor’s absence. While he intended to control state affairs through his trusted officials and generals, the sword, though not fully stable and reliable in terms of commanding the military and punishing criminals, became a useful tool for the Wanli emperor to continue his rule. In the 1592 suppression of Babai (哱拜), the Wanli emperor started to use the Shangfang Sword in military expeditions. He granted the sword to Wei Xuezheng (魏學曾) and Ye Mengxiong (葉夢熊) respectively, allowing them to execute subordinate officers without following the regular criminal reporting procedure.¹³³ After the victory in this battle, he continued to grant the Shangfang Sword to the Minister of War, Military Commissioners (*jinglue* 經略), the Censor, and Grand Coordinator in subsequent years. Some famous officials, including Xing Jie (邢玠), Li Hualong (李化龍), Yang Hao (楊鎬), and Xiong Tingbi (熊廷弼),

¹³² John W. Dardess, *A Political Life in Ming China: A Grand Secretary and His Times* (Lanham: Rowman & Littlefield, 2013), 191–94; Harry Miller, *State Versus Gentry in Late Ming Dynasty China, 1572–1644* (New York: Palgrave Macmillan, 2008), 24–25.

¹³³ *Ming shilu* 明實錄 (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 1966), *Shenzong Shilu*, 249: 4629–30, June 1, WL20 (1592; WL = Wanli regin).

received the sword.¹³⁴ The Wanli emperor even promised to reward the Shangfang Sword to soldiers who beheaded one thousand enemies on the battlefield.¹³⁵

The bearer of the sword possessed the power to “carry out military justice procedures” (*junfa congshi* 軍法從事) without following the regular criminal procedure. The core of the concept of the sword was to punish subordinates in an “expedient manner” (*bianyi xingshi* 便宜行事), a manner that was demanded particularly under urgent circumstances.¹³⁶ The emperor reiterated that the bearer could kill anyone under the rank of major military commissioner, including disobedient subordinates, rebellious and corrupt officials, and deserting soldiers.¹³⁷ He even stipulated that any such cases reported from the sword bearer would be approved immediately (*yi jian congshi, fan you zouqing like pifa* 以劍從事, 凡有奏請立刻批發).¹³⁸ Through the granting of the sword, the Wanli emperor intended to encourage military officers to kill enemies and disobedient persons. The frequent use of the sword was closely related to the increase of warfare. It also showed how the emperor manipulated the relationship between officials by rewarding his trusted men with this honorable item.

After Wanli, the sword was still in use in various military actions. Wanli’s trusted sword bearer Xiong Tingbi encountered fierce political struggles after Wanli’s death. He

¹³⁴ *Ming shilu, Shenzong Shilu*, 318: 5929, January 24, WL26 (1598); *Ming shilu, Shenzong Shilu*, 338: 6257–58, August 1, WL27 (1599); *Ming shilu, Shenzong Shilu*, 339: 6292, September 9, WL27 (1599); *Ming shilu, Shenzong Shilu*, 572: 10790–91, July 4, WL46 (1618); 583: 11102, June 19, WL47 (1619).

¹³⁵ *Ming shilu, Shenzong Shilu*, 493: 9282, March 8, WL40 (1612).

¹³⁶ *Ming shilu, Shenzong Shilu*, 249: 4629–30, June 1, WL20 (1592); *Ming shilu, Shenzong Shilu*, 330: 5684–91, October 15, WL24 (1596); *Ming shilu, Shenzong Shilu*, 338: 6257–58, August 1, WL27 (1599).

¹³⁷ *Ming shilu, Shenzong Shilu*, 572: 10790, July 4, WL46 (1618).

¹³⁸ *Ming shilu, Shenzong Shilu*, 571: 10762–63, June 5, WL46 (1618).

was forced to return the sword to the new Taichang emperor because his opponents claimed he had abused the sword to ride roughshod over others.¹³⁹ The vitality of the Ming increasingly fell in the following decades, and preauthorized execution did not work as expected under the significant social and political turbulence. Facing rising rebellions and approaching invasions, the Chongzhen emperor granted the Shangfang Sword to a number of talented generals, including Yuan Chonghuan (袁崇煥) and Lu Xiangsheng (盧象升). Both Yuan and Lu ended in tragedy during the fierce battles against the Manchus. The former was imprisoned and executed by the emperor, partly because he used the Shangfang Sword to decapitate another general, Mao Wenlong (毛文龍), who also held a Shangfang Sword granted in the previous reign.¹⁴⁰ Lu was isolated by the officials, who were inclined towards making peace with the Manchus, and he battled until death without sufficient support from the court.¹⁴¹ The Shangfang Sword, which was torn between the emperor's will and the bearer's power, was doomed to meet with constant dilemma and tragedy. When the bearer won support from the emperor, he could face strong criticism from officials who feared his power. When he executed disobedient officials on behalf of the emperor, the emperor might take precautions against his potential threat to imperial authority.

The Shangfang Sword emerged in the late Ming due to the large-scale socio-political turmoil. It fell into decline because of the same circumstances. After the fall of the Ming dynasty, the authorities rarely used the Shangfang Sword in politics and the death penalty. Instead, the Qing government relied on the “king's order and banner-

¹³⁹ *Ming shilu, Xizong Shilu*, 1: 46–50, September 13, TC1 (1620; TC = Taichang reign).

¹⁴⁰ *Ming shilu, Chongzhen Shilu*, 23: 1382–97, June 5, CZ2 (1629; CZ = Chongzhen reign).

¹⁴¹ *Ming shilu, Chongzhen Shilu*, 11: 350–54, December 10, CZ11 (1638).

plaque” (*wangming qipai* 王命旗牌) and the militarized social organizations left by the Ming institution. This transformation was related to the reconsolidation of monarchical power and bureaucratic reform during the Qing dynasty. Military commissioners were occasionally empowered to execute criminals on behalf of the imperial court. However, the practice of “executing without prior approval” rarely occurred until the breakout of rebellions during the nineteenth century.

Beating to Death: The Art of Informality

During its long history in China, flogging as a punishment (*chi* 笞 and *zhang* 杖) had been widely used in various dimensions and processes. In the judicial system, flogging was used as an instrument of torture and a punishment for both minor offences and felony crimes. In the political realm, flogging at the court (*tingzhang* 廷杖) allowed emperors to punish officials arbitrarily without following specific procedures. Victims of such corporal punishment suffered pain for months or years. But they might also be killed during the process of punishment. The size of the caning instrument and the number of strokes varied from one case to another. The flexibility and ambiguous role of this punishment created a space for both state and local authorities to manipulate informality and local governance. Moreover, some dynasties allowed local authorities to execute convicts by flogging (*zhangbi* 杖斃, *zhangsha* 杖殺, *chisha* 笞殺, or *chuishha* 垂殺), while in the standard system, punishment by flogging was usually linked with “trivial matters” (*xishi* 細事) and finalized at the locality without going through judicial review. Particularly during the centralization process in which the state intended to place strict

controls over the use of the death penalty, the changing pattern of execution by flogging revealed a special realm in which various competing forces, including centralization and decentralization and formality and informality, jointly constructed the idea of expediency in the Chinese death penalty.

To better understand the formation of execution by flogging, it is necessary to trace how it was created and operated between formal and informal punishment throughout China's long history. During the Zhou dynasty, flogging was used to discipline students and soldiers.¹⁴² At that time it was not primarily used for serious crime. It carried both punitive and educative purposes, and by the end of the Eastern Zhou dynasty the regional states had gradually incorporated it into the interrogation process.¹⁴³ During the trend of state building and the consolidation of the ruler's power, flogging was believed to be a useful tool to obtain a confession during an investigation. Punishers were able to keep convicts suspended between life and death because the number of strokes and the mode of application could easily be adjusted during the interrogation. However, compared to the standard penalty of chopping off feet or organs and tattooing the face or forehead, flogging on the backside was not considered a serious corporal punishment. During the Western Han dynasty (206 BC–9 AD), Emperor Wen of Han (202–157 BC) replaced tattooing and amputation of feet and nose with the punishment of flogging.¹⁴⁴ Noted for his enlightened policy, he claimed to rely more on virtue than on

¹⁴² Du Bingqian 杜冰倩, "Zhongguo gudai chizhang xingfa de lishi fenxi" 中國古代笞杖刑罰的歷史分析 (Historical Analysis of Chinese Ancient Punishments of Whipping and Flogging), *Helongjiang sheng zhengfa guanli ganbu xueyuan xuebao* 黑龍江省政法管理幹部學院學報 (Journal of Heilongjiang Administrative Cadre Institute of Politics and Law), 101 (2013), 32–35.

¹⁴³ Du Bingqian 杜冰倩, "Zhongguo gudai chizhang xingfa de lishi fenxi," 32.

¹⁴⁴ Du Bingqian 杜冰倩, "Zhongguo gudai chizhang xingfa de lishi fenxi," 32.

cruel corporal punishments. He was clearly aware that flogging might kill the convicts. During the early years of the dynasty, execution by flogging had once been allowed in the punishment of serious crimes.¹⁴⁵ Only a decade earlier, Lü Xu (呂嫫), a trusted official of Empress Dowager Lü, was executed by flogging.¹⁴⁶ However, the emperor argued that even with corporal punishments people still committed crimes and the unlawful behaviours did not vanish. He accepted Chunyu Tiying's (淳于緹縈) petition, which aimed to prevent her father from suffering corporal punishment. He admitted that using a punishment of breaking their arms and legs, branding their skin, and rendering them unable to rest and recover for their whole life" (*duan zhiti, ke jifu, zhongshen buxi* 斷支體，刻肌膚，終身不息) should not be done by any imperial official.¹⁴⁷ In order to balance the ideals of transformation and retribution, the emperor commanded officials to change the punishment of cutting off the nose to three hundred strokes of beating and change the amputation of the left foot to five hundred strokes.¹⁴⁸ Through his regularization of flogging, the punishment carried more punitive meaning than before. It was not only used for interrogation of suspects. It was now used primarily on criminals who had been tried and convicted through a formal judicial procedure.

The reform of Emperor Wen of the Han soon encountered challenges in actual practice. Officials discovered that the punishment of flogging "gained the reputation of using a light penalty on the surface but in reality it actually meant executing people" (*wai*

¹⁴⁵ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, zhi, juan 23, 1091.

¹⁴⁶ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, benji, juan 3, 95.

¹⁴⁷ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, zhi, juan 23, 1091.

¹⁴⁸ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, zhi, juan 23, 1091.

you qingxing zhi ming, nei shi sharen 外有輕刑之名，內實殺人).¹⁴⁹ This made the emperor's reform appear ironic under the so-called lenient discourse. The succeeding Emperor Jing of Han (188–141 BC) announced in the first year of his reign that “flogging was in essence no different from the death penalty; even if a convict luckily survived the flogging, he would never be a normal person” (*jia chi yu zhongzui wuyi; xing er bu si, buke wei ren* 加笞與重罪無異；幸而不死，不可為人).¹⁵⁰ The emperor reduced the punishment of five hundred strokes to three hundred and that of three hundred strokes to two hundred. He also standardized the size of the wooden cane.

Some officials, however, still used flogging as a tool to consolidate their authority.¹⁵¹ Beating to death continued to occur in the following centuries, particularly in the case of political struggles. However, except for some periods when execution by flogging was expressly accepted by the rulers, emperors and officials primarily used this punishment to exert their power and avoid establishing judicial procedures. Flogging as a method of death penalty was not acknowledged as a legitimate punishment, even though the state in this period had not completed its judicial centralization project and allowed regional authorities to execute convicts without further review.

The real systematic sanction of flogging as death penalty appeared in the Tang and Song Dynasties. During this period, flogging became one of the Five Standard Punishments (*wuxing* 五刑). As the lowest-level punishment in the empire's hierarchical system, flogging was not associated with the death penalty during the first half of the Tang dynasty. The imperial centre had repeatedly sent down procedural memorials and

¹⁴⁹ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, zhi, juan 23, 1099.

¹⁵⁰ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, zhi, juan 23, 1100.

¹⁵¹ Ban Gu, *Xin jiaoben hanshu jizhu bing fubian erzhong*, zhi, juan 23, 1100.

imposed control over the death penalty. Regional execution without prior approval from the centre was considered not only a disregard for human life but also an intervention in central authority. In a number of cases in which local officials executed convicts with strokes of the bamboo rod, they were impeached or criticized by the imperial court. Emperors at times killed officials by flogging or dispatched officials to conduct an execution at the locality, but the emperors primarily took the punishment as an integral element of monarch-official relations rather than a regularized death penalty against all subjects.¹⁵² Emperor Xuanzong of the Tang (685-762 AD) extended the punishment to ordinary people who offended officials. Many of these practices started as regular flogging but ended up as execution by flogging.¹⁵³ The imperial court once asserted the necessity of restricting such penalties. As the imperial court argued, “although the penalty of flogging was not a death penalty [in our system], it killed more than half of the convicts” (*sui fei sixing, daban yunbi* 雖非死刑，大半殞斃).¹⁵⁴ Despite this argument, emperors continued to sanction punishment with heavy beating. Being fully aware of the fatal effect of flogging, Daizong, Dezong, Xianzong, and succeeding emperors consistently commanded officials to “execute convicts with heavy beating” (*jue zhongzhang* 決重杖) or “give convicts a certain number of heavy strokes to execute

¹⁵² Liu Xu, *Jiu Tang shu fu*, juan 186: 4847; Ouyang Xiu and Song Qi, *Xin Tang shu*, juan 56: 1414–18.

¹⁵³ See, for instance, Liu Xu, *Jiu Tang shu fu*, juan 9: 222–23; Liu Xu, *Jiu Tang shu fu*, juan 9: 229–30; Liu Xu, *Jiu Tang shu fu*, juan 95: 3018–19; Liu Xu, *Jiu Tang shu fu*, juan 165: 4305–10.

¹⁵⁴ Wang Pu 王溥, *Tang Huiyao* 唐會要 (Essential Documents of the Tang Dynasty) (Beijing: Zhonghu shuju, 1955), juan 40, 717–19.

them” (*zhongzhang yidun chusi* 重杖一頓處死).¹⁵⁵ Sources from later periods argued that the Tang authorities used the ambiguous term “*dun*” (a certain number of) without specifying the exact number of strokes.¹⁵⁶ In some cases, the court specified the number as one hundred strokes or sixty strokes of heavy beating.¹⁵⁷ However, by adjusting the number and the force of weight of the strokes, judicial officials could easily kill the convicts when carrying out the punishment.¹⁵⁸

Some officials fiercely criticized the practice of beating to death. During Daizong’s reign, Lu Zhengyi (盧正已), a Board of Punishment officer, argued that no law permitted officials to beat convicts to death, and thus it was necessary to make a clear rule that no one could be beaten to death during the process of heavy beating.¹⁵⁹ Nevertheless, Lu’s argument did not stop the practice of beating to death. During Xianzong’s reign, the court enacted a law stipulating that anyone who stockpiled over five thousand *guan* of cash coins should be sentenced to “execution by a certain heavy strokes” (*tongzhang yidun chusi* 痛杖一頓處死).¹⁶⁰ In later dynasties, the continued flourishing of this penalty and the intentional manipulation of its informality allowed

¹⁵⁵ Dong Gao 董誥 et al., *Quan Tang wen* 全唐文 (Complete Tang Dynasty Prose) (Beijing: Zhonghu shuju, 1987), juan 48, 532b–533a; Dong Gao, *Quan Tang wen*, juan 61, 655b–657a; Dong Gao, *Quan Tang wen*, juan 62, 660a–660b.

¹⁵⁶ Ma Duanlin, *Wenxian tongkao*, juan 166, 1441a–1441b.

¹⁵⁷ Dong Gao, *Quan Tang wen*, juan 437, 4457b; Sima Guang 司馬光, *Zizhi tongjian* 資治通鑑 (Comprehensive Mirror in Aid of Governance) (Beijing: Guji chubanshe, 1956), juan 220, 7049–51.

¹⁵⁸ Ma Duanlin, *Wenxian tongkao*, juan 166, 1441b; Sima Guang, *Zizhi tongjian*, juan 215, 6876.

¹⁵⁹ Dong Gao, *Quan Tang wen*, juan 437, 4457b.

¹⁶⁰ Dong Gao, *Quan Tang wen*, juan 62, 660a–660b. During the Tang dynasty, one *guan* in theory should contain one thousand copper cash, but due to the shortage of copper cash, one *guan* could only include less cash in actual transaction. See Lü Simian 呂思勉, *Sui-Tang Wudai shi* 隋唐五代史 (History of Sui, Tang, and Five Dynasties) (Nanjing: Jiangsu renmin chubanshe, 2014), zhong, 671–75.

both the emperor and officials to avoid the strict statutory requirements and the rigid judicial review process over the use of the death penalty. While the development of beating to death inevitably involved monarch-bureaucrat relations and the growing tensions between local officials and social powers, the increasing emergence of this informal practice revealed that the state and officials created a space for judicial expediency as a way to respond to the increasingly centralized and standardized criminal system.

The non-Han regimes also used flogging to death and particularly influenced the flogging at court punishment during the Ming dynasty. In the Liao (907–1125) and Jin (1115–1234) Dynasties, the non-Han rulers combined their traditional methods of punishment with Chinese penalties. The early Jin rulers used flogging to punish both minor offences and felony crimes. Execution by flogging was legislated as a standard death penalty. Based on their conventional way of punishment, the Jin dynasty's early legal code allowed authorities to put robbers and murderers in a bag and beat them on the head until death.¹⁶¹ On the other hand, Jin rulers beat corrupt bureaucrats or Han Chinese officials partly because of humiliation. During the latter half of the dynasty, the Jin court increasingly incorporated Han Chinese legal codes. Since Chinese codes did not perceive flogging as a legitimate death penalty, the Jin rulers gradually separated the flogging penalty from capital punishment.¹⁶² The subsequent Yuan dynasty underwent a similar

¹⁶¹ Kawamura Yasushi 川村康, "Sōdai jōsa kō" 宋代杖殺考 (Study of Execution by Flogging), *Tōyō Bunka Kenkyūjo kiyō* 東洋文化研究所紀要, 120 (1993), 43-111; Chen Chao-yang 陳昭揚, "Jin dai defang guanli zhong de zhangsha" 金代地方管理中的杖殺 (Execution by Flogging in Jin Dynasty Local Administration), *Taiwan shida lishi xuebao* 臺灣師大歷史學報 44 (2010), 102–22.

¹⁶² Chen Chao-yang, "Jin dai defang guanli zhong de zhangsha," 122–29.

development. However, at the local level, some officials still executed unruly subjects by bamboo beating.¹⁶³

It was not until the Ming dynasty when the judicial review for capital cases moved to another level that the semi-legitimate status of execution by flogging was greatly challenged and restricted by the imperial centre. The underlying cause of this development was the centralization of judicial review and the gradually intensified conflict between monarch and bureaucrats. Zhu Yuanzhang, the founding emperor of the Ming dynasty, initiated a campaign against disobedient officials through the use of bamboo sticks. He viewed flogging as one among many methods of controlling bureaucrats. He explicitly stated that his use of this punishment was influenced by the Jin and Yuan Dynasties.¹⁶⁴ Born to a poor peasant family under Mongolian rule, Zhu had witnessed how the punishment of flogging operated during the Yuan dynasty. In 1375, the Secretary of the Board of Punishment, Ru Taisu (茹太素), submitted a lengthy memorial to the emperor. Zhu Yuanzhang was annoyed by Ru's superfluous report. He was particularly offended by Ru's critique of punishing talented officials, so he beat Ru with a stick at the court. Luckily for Ru, the emperor did not intend to kill him. The emperor still praised Ru for his insightful comments about the problems of government. The flogging and the subsequent demotion of Ru was only used to warn him, while in later years Ru was promoted to a higher position. Ru's advice was praised by the throne

¹⁶³ Iwai Shigeki 岩井茂樹, "Sōdai ikō no Shikei no shosō to hō bunka" 宋代以降の死刑の諸相と法文化 (Aspects of the Death Penalty and Legal Culture Since the Song Dynasty), in *Higashi Ajia no shosō 東アジアの死刑* (Capital Punishment in East Asia), ed. Tomiya Itaru 富谷至 (Kyoto: Kyoto daigaku gakujutsu shuppankai, 2008), 49–108.

¹⁶⁴ Shen Defu 沈德符, *Wanli yehuo bian 萬曆野獲編* (Unofficial Tales of the Wanli Era) (Beijing: Zhonghua shuju, 1959), juan 18, 475–77.

and circulated among officials.¹⁶⁵ But Zhu Yuanzhang still deemed the use of punishment in the control of officials an important part of his ruling.

In 1380, the military officer Zhu Liangzu (朱亮祖) had a totally different fate. When he was assigned to the garrison of Guangzhou, Zhu intentionally misled the emperor in order to kill an innocent magistrate. His intent was discovered soon after the death of the magistrate. He and his son Zhu Xian (朱暹) were then called to the capital and executed by bamboo strokes. Since the emperor was particularly angered by the fact that Zhu Liangzu had collaborated with local bullies in implicating the magistrate in crime, he ordered the executioner to flay off Zhu Xian's skin and hang it on a pole in the market. The second son of Zhu Liangzu, Zhu Yu (朱昱), was pardoned this time. But ten years later, he was executed after taking part in a failed rebellion plotted by Prime Minister Hu Weiyong (胡惟庸).¹⁶⁶ Zhu Liangzu's case was certainly different from the case of Hu Weiyong, but in both cases the emperor was eager to demonstrate to his officials that anyone who intended to mislead or betray him would be severely punished by humiliating and cruel punishments.

Compared to Zhu's brutal suppression of thousands of opponents, punishment by flogging was not considered to be as cruel as other extreme punishments. Although it usually resulted in flesh and blood flying during the process, it preserved the victims' corpses whole and prevented them from being viewed by the public. The somatic integrity of corpses was considered an important factor in the respect for the dead. Beheading and slicing were much more terrifying than flogging and they were both

¹⁶⁵ Zhang Tingyu 張廷玉 et al., *Ming shi* 明史 (The History of Ming Dynasty) (Taipei: Dingwen shuju, 1980), juan 139, 3986–87.

¹⁶⁶ Zhang Tingyu, *Ming shi*, juan 132, 3859–60.

standard punishments in the code. This is probably the reason why Zhu Yuanzhang did not frequently use flogging to execute officials. The most common way he executed officials was still beheading. Zhu Liangzu, Zhu Xian, and Xue Xiang (薛祥) were the only victims of flogging to death under Zhu Yuanzhang's command. In the punishment of Guo Huan (郭桓) and relevant corrupt officials, he even killed over ten thousand convicts. Zhu might be an extreme example in the development of the death penalty in Chinese history. Emperors after him took a relatively mild approach to the officials who committed corruption or offended the centre. They increased the use of flogging in the court, but they rarely killed officials through this punishment. The only exceptions were the Zhengde emperor (1491—1521) and Jiajing emperor (1522—1566). In the debate over his inspection trip to the south (1519), the Zhengde emperor killed over fourteen officials by flogging.¹⁶⁷ Jiajing adopted a similar approach in dealing with the Great Rites Controversy (1521—1524). He continued to use this punishment afterwards, as the emperor-official conflict intensified during and after his rule.

What is intriguing is the practice at the local level. Roughly since the Yongle emperor (1360—1424), the Ming state started to punish officials severely for executing convicts by flogging. During the founding years of the dynasty, Zhu Yuanzhang also criticized—though very rarely—those who used this informal death penalty. In 1371, Zhu Yuanzhang dispatched troops to suppress rebels in Sichuan. The battle ended in a victory. When evaluating the merits and demerits of military generals, the emperor condemned Zhu Liangzu for executing officers by blows of a bamboo stick without prior

¹⁶⁷ Zhang Tingyu, *Ming shi*, juan 189, 5022–28.

permission.¹⁶⁸ Since Zhu Liangzu made a great contribution to military expeditions, the emperor did not kill him until he mislaid the throne in 1380. Partially because he was concerned more about the obedience of officials than their treatment of subjects, Zhu Yuanzhang did not spend much effort on restricting flogging to death. In 1403, Yongle ascended the throne and started to regulate this punishment. The Assistant Surveillance Commissioner of Daning, Wang Yong (王庸), in a rage beat his servant to death. The emperor pardoned Wang due to his previous contribution to the state but then banished him for the arbitrary use of an illegal death penalty.¹⁶⁹ In 1405, the Assistant Surveillance Commissioner of Guizhou, Li Zheng (李政), was not that fortunate. He killed his subordinate out of anger by flogging. The emperor considered his merits but still approved his execution because his misconducts had outweighed his achievements.¹⁷⁰ As Yongle explained in a 1416 case, execution by flogging treated ordinary people's lives as grass and in essence was no different from murder.¹⁷¹ Although Yongle had been cruel and mean to local officials who failed to respond to local issues, his policy strengthened imperial control over the death penalty and largely prevented the abuse of the bamboo stroke.

After Yongle's constant efforts, the Ming state's control over beating to death reached a peak under the succeeding Xuande emperor (1399—1435). Right after he came to power, the Xuande emperor quickly executed an official who beat a commoner to

¹⁶⁸ *Ming shilu, Taizu Shilu*, 70: 1304–5, December 12, HW4 (1371; HW = Hongwu reign).

¹⁶⁹ *Ming shilu, Taizu Shilu*, 23: 422, September 15, YL1 (1403; YL = Yongle reign).

¹⁷⁰ *Ming shilu, Taizu Shilu*, 47: 719–20, October 7, YL3 (1405).

¹⁷¹ *Ming shilu, Taizu Shilu*, 178: 1945–46, July 25, YL14 (1416).

death.¹⁷² His strict policy frightened many officials. Some of them accidentally killed convicts by flogging and then reported the incidents to the court and requested the emperor to punish them.¹⁷³ As the Xuande emperor claimed, local officials should treat their people like their children. If an official killed one or two members of a family, his action was no different than that of a bandit.¹⁷⁴ The emperor further reasoned that since killing other people's poultry was a crime, arbitrarily killing a person was much more serious. As a result, he commanded the authorities to execute a county magistrate who willingly killed local people by flogging without a fair trial and treatment.¹⁷⁵ Throughout his reign, the Xuande emperor severely prohibited the excessive use of flogging and executed a number of officials who abused this punishment.¹⁷⁶

Xuande's policy marked a milestone in the restriction of bamboo beating. Yet such restriction underwent a dramatic decline as the subsequent emperors gradually faced strong challenges from high officials and eunuchs. The Zhengtong emperor (1427—1464), for example, rarely resorted to severe punishment in cases of beating to death. Except for rare exceptions, he either demoted the offenders or transferred them to other posts.¹⁷⁷ In a case where the offender was his son-in-law, he even explicitly waived the

¹⁷² *Ming shilu, Xuanzong Shilu*, 14: 388–89, February 25, XD1 (1426; XD = Xuande reign).

¹⁷³ *Ming shilu, Xuanzong Shilu*, 57: 1367, August 24, XD4 (1429); *Ming shilu, Xuanzong Shilu*, 66: 1549–50, May 2, XD5 (1430); *Ming shilu, Xuanzong Shilu*, 68: 1599, July 16, XD5 (1430).

¹⁷⁴ *Ming shilu, Xuanzong Shilu*, 64: 1520–21, March 27, XD5 (1430).

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ming shilu, Xuanzong Shilu*, 64: 1520–21, March 27, XD5 (1430); *Ming shilu, Xuanzong Shilu*, 76: 1760–61, February 4, XD6 (1431); *Ming shilu, Xuanzong Shilu*, 68: 1603, July 23, XD5 (1430); *Ming shilu, Xuanzong Shilu*, 109: 2445, March 8, XD9 (1434); *Ming shilu, Xuanzong Shilu*, 115: 2582–83, December 7, XD9 (1434).

¹⁷⁷ *Ming shilu, Yingzong Shilu*, 106: 2336–37, May 6, ZT9 (1444; ZT = Zhengtong reign); *Ming shilu, Yingzong Shilu*, 152: 2989, April 27, ZT12 (1447).

offender's punishment.¹⁷⁸ In some other cases, he also pardoned local officials who excessively used execution by flogging.¹⁷⁹ During the reigns of the Chenghua emperor (1447—1487) and the Hongzhi emperor (1470—1505), the imperial court sentenced some county magistrates to death for their excessive use of execution by flogging. In 1471, the Jiashan County Magistrate Lin Hong (林弘) arbitrarily killed one entire family and eighteen other people. During the persecution, he even killed the victim's pregnant wife and burned her body and the dead fetus. He was then sentenced to execution by slow slicing.¹⁸⁰ In 1472, the Assistant Surveillance Commissioner of Datong, Xu Shu (徐恕), executed people by flogging and persecuted over twenty families in the region. He was then sentenced to beheading after the Board of Punishment investigated the case.¹⁸¹ In 1488, the Lucheng County Magistrate, Wang Jun (王濬), executed ordinary people by flogging and burned over one hundred people during the suppression of bandits. He was sentenced to death and his wife was banished to Fujian.¹⁸² Except for these extreme cases, the court usually pardoned the death penalty of the offenders.¹⁸³ The imperial court at times exhorted officials not to use flogging in execution, but as the Board of Punishment admitted, local officials usually resorted to execution by flogging in the cases of robbery and banditry.¹⁸⁴

¹⁷⁸ *Ming shilu, Yingzong Shilu*, 124: 2484–85, December 21, ZT9 (1444).

¹⁷⁹ *Ming shilu, Yingzong Shilu*, 42: 820, May 16, ZT3 (1438).

¹⁸⁰ *Ming shilu, Xianzong Shilu*, 90: 1754–55, April 24, CH7 (1471; CH = Chenghua reign).

¹⁸¹ *Ming shilu, Xianzong Shilu*, 107: 2090, August 23, CH8 (1472).

¹⁸² *Ming shilu, Xiaozong Shilu*, 10: 203–5, Intercalary January 2, HZ1 (1488; HZ = Hongzhi reign).

¹⁸³ *Ming shilu, Xianzong Shilu*, 107: 2090, August 23, CH8 (1472); *Ming shilu, Xianzong Shilu*, 116: 2249–50, May 17, CH9 (1473); *Ming shilu, Xianzong Shilu*, 120: 2308–9, September 3, CH9 (1473).

¹⁸⁴ *Ming shilu, Xianzong Shilu*, 202: 3545–46, April 12, CH16 (1480).

Moreover, in addition to the lesser control over local officials, the continued practice of informal administrative fees and the existing system of monetary redemption also enhanced the possibility of the punishment of flogging being abused. Under the hierarchical structure of standard punishment, bamboo strokes and various types of light offences could be replaced by monetary fines. The penitence punishment (*shuxing* 贖刑) not only gave the convicts an opportunity to reform themselves but also provided a way for local authorities to increase revenue and cover expenditures. The limited financial support from the court enhanced the demand for redemption and informal taxation. Roughly since the sixteenth century, local officials had created their own ways of increasing revenue, particularly when growing expenses and rapid commercialization had made it difficult to rely on an official's salary. In 1450, the imperial court enhanced the amount for the redemption of bamboo strokes.¹⁸⁵ In the following years, when the local government continued to increase local taxes, redemption from strokes steadily increased over time. The fine not only contributed to local revenue but also created a space for officials to manipulate penalties. When local elites and ordinary people refused to pay taxes or grain that were required by the officials, flogging could be an efficient tool to force them to pay. For example, in 1425, the Left Censor-in-Chief of the Censorate, Xia Di (夏迪), forced local people to pay grain and then executed local grain-collecting officers by flogging. The abuse of flogging was directly related to tax collection¹⁸⁶ and the on-going prohibition of flogging to death could not reach its goal of protecting ordinary people from official and government personnel extortion. All in all, during the

¹⁸⁵ Zhang Tingyu, *Ming shi*, juan 93, 2294–95.

¹⁸⁶ *Ming shilu, Renzong Shilu*, 6: 170–72, Intercalary July 25, HX1 (1425; HX = Hongxi reign).

latter half of the Ming dynasty, local governance was largely left to regional authorities, and the imperial court gradually abandoned strict punishment over the abuse of bamboo beatings. This development was closely related to the transformation of the local political ecology particularly when various social powers gradually formed a visible force in the public realm, and local officials had to develop their own strategies of handling local politics while receiving limited aid from the central government. In the end, the practice of beating to death remained even though the imperial court constantly emphasized its illegality. The real attempt to regulate the practice happened in the Qing dynasty when emperors learned significant lessons from Ming politics and faced new challenges of social development.

Martial Law and Militarization

In addition to authorized execution, which was primarily used on a case-by-case basis, the military law system, which usually followed the commander's rules and the state's special regulations, provided a significant foundation for the practice of summary execution. In imperial China, as in other civilizations, the state usually enacted special rules for the military, because harsh laws would help establish a strong and disciplined military. This is not to say that the state usually set up a clear boundary between the civilian and the military. Most of the time, rulers mixed these two and even incorporated military organization into civilian communities. As Philip Kuhn points out, a state-sponsored Garrison Militia (*fubing* 府兵) was formed in the sixth and the seventh centuries and some of its social organizations, including the hereditarily obliged families of *fang* (坊) and *tuan* (團), had profound influence upon the development of local

militarization in later dynasties.¹⁸⁷ Regional government had been burdened with the administration of the vast realm and supervision of social organizations, and it had structurally combined not only formal and informal spheres but also military and non-military mechanisms. To the Chinese state, civilian officials and local agents were as important as the state's troops in both penetration of the state and the maintenance of public security. On the other hand, according to Timothy Brook, the state also had to adapt to the operation of the society as it constantly received influence “working upward in capillary fashion from social networks below that placed the state in a posture more reactive than formative.”¹⁸⁸

A brief discussion of the late imperial militarization will be useful for an understanding of the rise of summary execution in modern China, not only because the suppression of banditry and rebellion was closely associated with military action but also because militarization had influenced Chinese state-and-society relations and shaped the ways locals and officials approached communal affairs and social relations. One of the keys to understanding the role of militarization in Chinese legal culture is the concept of *junfa* (軍法). In classical texts, this term referred not only to military commands and regulations but also to a broader realm of martial law.¹⁸⁹ Throughout Chinese history, dynastic rulers enacted a series of special laws for certain heinous crimes, particularly treason, banditry, rebellion, and military offences. In some periods, the martial law system applied to specific regions or subjects, and hence these special laws, usually harsh

¹⁸⁷ Philip A. Kuhn, *Rebellion and Its Enemies in Late Imperial China: Militarization and Social Structure, 1796–1864* (Cambridge: Harvard University Press, 1970), 15–20.

¹⁸⁸ Timothy Brook, *The Chinese State in Ming Society* (London: Routledge Curzon, 2005), 10.

¹⁸⁹ For the early development of military law in dynastic China, see Robin D.S. Yates, “Law and Military in Early China,” in *Military Culture in Imperial China*, ed. Nicola Di Cosmo (Cambridge: Harvard University Press: 2009), 23–44.

in nature, extended the military justice procedure to members outside the major branches of the military. Emperors at times instructed bureaucrats that some serious violations, including corruption, could result in severe punishment with military justice procedure (*cong junfa* 從軍法, *yi junfa lun* 以軍法論, or *junfa congshi*). In frontier areas or regions under warfare, the regions usually carried out martial law in order to suppress rebellion and riot in an efficient manner.

The military law and military justice procedure gradually took shape in the period when the system of garrison militia was formed. As the Tang dynasty developed a variety of military organizations, the standardization of military law and judicial procedure was also in great demand. The *Tang Code* stipulated a series of regulations regarding the behaviours of soldiers, military officers, and security personnel.¹⁹⁰ Military offences were generally punished more seriously than non-military offences. If the violations occurred on the battlefield, most violators were sentenced to extreme punishment. In the adjudication process, military commanders possessed broad authority to punish soldiers while the emperor had the power to decide the sentences of high-ranking officers. The severe punishment for military offences set up a boundary between military and civilian cases, although in some civilian crimes, particularly when robbers killed officers or

¹⁹⁰ Liao Zuwei 廖祖威, “Tangdai junfa yu anli tantao” 唐代軍法與案例探討 (Study of Military Law and Cases during the Tang Dynasty) (master’s thesis, National Chung Cheng University, 2004), chapter 3. For the military laws in Tang Code, see particularly Wallace Johnson, *The Tang Code: Volume II: Specific Articles* (Princeton: Princeton University Press, 1977), 210–238.

trespassed on others' properties, military commanders and even self-defenders were allowed to execute offenders through a summary procedure.¹⁹¹

It was during the Northern Song dynasty that the imperial centre resumed the power of reviewing capital cases from the military.¹⁹² During the Southern Song dynasty, the government further instilled a military justice unit under the surveillance of the Supreme Commandant (*dutongzhisi* 都統制司), the head of the Imperial Defence Command.¹⁹³ However, while the government attempted to centralize and standardize military justice, military commanders possessed the power to decide the majority of death sentences. Like any other period in imperial history, military authorities in this period were allowed to carry out military justice in an expedient manner. The central authorities, including the emperor, could not fully control the execution of soldiers even with the instalment of review mechanisms.

During the Yuan and Ming dynasties, military law and militarized social organization reached a relatively high maturity. The Yuan dynasty (1271–1368) implemented a series of military laws, including a separate Statute for Military Affairs

¹⁹¹ Yan Xiaojun 閻曉君, “Tanglü ‘gesha wulun’ yuanliu kao” 唐律“格殺勿論”淵流考 (Study on the History of “Summarily Executing Criminals without Deliberation and Exception” in the Tang Code), *Xiandai faxue* 現代法學 (Modern Law Science), no. 4 (2009): 145–55.

¹⁹² Hu, *Zhongguo gudai sixing zhidu shi*, 267–72; Zhang Ming 張明, “Songdai richang junshi shenpan zhidu shulun” 宋代日常軍事審判制度述論 (The Common Military Trial System in the Song Dynasty), *Qinghai shehui kexue* 青海社會科學 (Qinghai Social Sciences), no. 4 (2009): 113–17.

¹⁹³ Wang Qingsong 王青松, “Nan Song junshi lingdao tizhi yanjiu” 南宋軍事領導體制研究 (Research on the Military Leading System of the Southern Song Dynasty) (Ph.D. diss., Shaanxi Normal University, 2007), chapters 2–3.

(*junlü* 軍律) and the censor's authority to investigate military offences.¹⁹⁴ Based on its ethnicized and militarized structure, the Yuan state created the system of Mingghan (*minhan* 敏罕), which resembled the garrison militia system and originated in the Mongols' steppe political organization.¹⁹⁵ After the fall of the Yuan dynasty, the Yuan military system, together with the systems left by Yuan's predecessors since the seventh century, laid the foundation of the Ming dynasty's Weisuo garrison system (*weisuo* 衛所) and the well-structured military statute, the Laws Relating to the Ministry of War (*binglü* 兵律). The Ming Code stipulated summary execution for various offences, including rebellion by military officers, running away from the front line, and heinous crimes by yamen clerks and runners.¹⁹⁶ The emperors and military commanders also frequently issued prohibitions that resorted to summary execution against banditry and military offences in certain regions.¹⁹⁷ Most of the regulations were inherited by the Qing Empire

¹⁹⁴ Wu Haihang 吳海航, "Chengjisihan 'dazhasa' tanxi" 成吉思汗《大札撒》探析 (A Study of the Great Yasa of Genghis Khan), *Faxue yanjiu* 法學研究 (Chinese Journal of Law), no. 5 (1999): 136–51; Li Mingde 李明德, "Yuandai sifa zhidu lueshu" 元代司法制度述略 (A Preliminary Study on the Judicial System of the Yuan Dynasty), *Faxue yanjiu*, no. 1 (1995): 91–96.

¹⁹⁵ Qi Ge 奇格, "Zailun Chengjisihan 'dazhasa' tanxi" 再論成吉思汗《大札撒》 (A Re-examination of Genghis Khan's Great Yasa), *Nei Menggu shehui kexue* 內蒙古社會科學 (Inner Mongolia Social Sciences), no. 6 (1996): 23–28; Yang Maosheng 楊茂盛, "Menggu de zongzu buluo jiqi minzu yu guojia de xingcheng" 蒙古的宗族部族及其民族與國家的形成 (Mongolian Patriarchal Clans and Tribes and the Formation of the Nation and State), *Beifang wenwu* 北方文物 (Northern Cultural Relics), 76 (2003): 58–69.

¹⁹⁶ Li Dongyang 李東陽, *Da Ming huidian* 大明會典 (The Collected Statutes of Great Ming) (Taipei: Guofeng chubanshe, 1953), 1908a–1908b.

¹⁹⁷ Li, *Da Ming huidian*, 2246a–2246b, 2260a; Chen Zilong 陳子龍, *Ming jingshi wenbian* 明經世文編 (The Collected Writings on Statecraft of the Ming Dynasty) (Beijing: Zhonghua shuju, 1962), juan 64, 548a–549b; Huang Zhangjian 黃彰健, ed., *Mingdai lili huibian* 明代律例彙編 (A Complete Compilation of the Laws and Substatutes of the Ming Dynasty) (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 1979), 368.

and continued to work before the rise of summary execution in the eighteenth century. However, it was the militarized organizations that extended the practice to its height in the nineteenth century and facilitated the rise of governors and later warlords that profoundly shaped Chinese society and politics in the twentieth century.

The major characteristic of the Ming's militarized institution was its close association with household registration and local lineages.¹⁹⁸ Under the Weisuo system, the garrison units across the nation were divided into smaller units of military households. The affairs of each unit were reported to the Provincial Headquarters (*dusi* 都司), the Chief Military Commission (*dudufu* 都督府), and the Ministry of War, while the cases of civilian communities were reported to the provincial government and eventually to the Board of Punishment.¹⁹⁹ In addition to garrisons, the Ming rulers further instilled local governance organizations below the county level, particularly groups under the category

¹⁹⁸ For the practice and development of lineage institutions in Chinese history, see Maurice Freedman, *Lineage Organization in Southeastern China* (London: University of London, Athlone Press, 1958); James Watson, "Chinese Kinship Reconsidered: Anthropological Perspectives on Historical Research," *China Quarterly*, 92 (1982): 589–622; Patricia Ebrey and James Watson ed., *Kinship Organization in Late Imperial China, 1000-1940* (Berkeley: University of California Press, 1986); Zhenman Zheng, *Family Lineage Organization and Social Change in Ming and Qing Fujian*, trans. Michael Szonyi (Honolulu: University of Hawai'i Press, 2001); Michael Szonyi, *Practicing Kinship: Lineage and Descent in Late Imperial China* (Stanford: Stanford University Press, 2002); Myron Cohen, *Kinship, Contract, Community, and State: Anthropological Perspectives on China* (Stanford: Stanford University Press, 2005). For the role of elite in the organization of lineages, see Joseph W. Esherick and Mary Backus Rankin ed., *Chinese Local Elites and Patterns of Dominance* (Berkeley: University of California Press, 1990).

¹⁹⁹ For the practice of *weisuo*, see Yu Zhijia 于志嘉, *Weisuo, junhu yu junyi: yi Ming-Qing Jiangxi diqu wei zhongxin de yanjiu* 衛所、軍戶與軍役—以明清江西地區為中心的研究 (The Weisuo Garrison System, Military Households, and Military Service in Jiangxi in the Ming-Qing Periods) (Beijing: Peking University Press, 2010); Chen Wenshi 陳文石, "Mingdai weisuo de bing" 明代衛所的兵 (The Soldiers of Weisuo Garrison in the Ming Dynasty), *Zhongyang yanjiuyuan lishi yuyan yanjiusuo jikan* 中央研究院歷史語言研究所集刊 (Bulletin of the Institute of History and Philology, Academia Sinica) 48, no. 2 (1977): 177–203.

“community compact” (*xiangyue* 鄉約). Through the state-sponsored moral teaching and the granting of governing authorities, the state intended to penetrate the localities, although it had to adapt to local political ecology in most instances.²⁰⁰ While many community compacts and state-sponsored social organizations fell into disarray, some compacts and state-society collaborative projects endured until the late Qing. By the mid-sixteenth century, the garrison system gradually integrated and the military household increasingly withered.²⁰¹ However, the militarization of local organization was still an outstanding characteristic of Ming and Qing society.

During the late imperial period, a number of semi-governmental groups and agents, including the previously established *baojia* security group (*baojia* 保甲), *baojia* head (*baozheng* 保正), local lineages, overseer (*zongli* 總理), local constable (*dibao* 地保), and elders (*qilao* 耆老), helped maintain local security, collect taxes, mediate disputes, and coordinate civil projects.²⁰² The Ming and scholar-officials further promoted community compacts, moral teaching, and village mediation, while the effect of these attempts varied from region to region. Most of these organizations featured extrajudicial functions, primarily in the resolution of “minor matters” (*xishi* 細事) – cases with sentences lower than exile, penal servitude, or the death penalty—as the

²⁰⁰ For sophisticated studies on the ritual practice and moral teaching of community compacts, see Yonghua Liu, *Confucian Rituals and Chinese Villagers: Ritual Change and Social Transformation in a Southeastern Chinese Community, 1368–1949* (Leiden: Brill, 2013); Joseph McDermott, “Emperor, Elites, and Commoners: The Community Pact Ritual of the Late Ming,” in McDermott, ed., *State and Court Ritual in China* (Cambridge: Cambridge University Press, 1999), 299–351.

²⁰¹ Yu, *Weisuo, junhu yu junyi*; Chen, “Mingdai weisuo de bing.”

²⁰² Frederick W. Mote, *Imperial China 900–1800* (Cambridge: Harvard University Press, 1999), 918–19.

imperial centre intended to leave these matters to local society.²⁰³ In many official-sponsored and privately organized community compacts, villagers and compact executives were required to assist government in bandit suppression and the seizure of criminals. Through the organization of local groups, the government aimed to control and manage local affairs, although local actors also created strategies to manipulate organizational affairs. In the case of raids and social unrest, authorities assigned local groups to assist in or take charge of local defence. In some urgent situations, military commanders and local officials even allowed local heads to punish villains in the military-styled “expedient manner,” usually through the announcement of edicts or granting of banner-plaque (*qipai* 旗牌).²⁰⁴

Among other factors, lineages played a unique role in the operation of unofficial punishment. As the basic unit of local social and political relations, the family had long possessed the power to punish its own inferior relatives.²⁰⁵ Such ethics-oriented power relations were valued and sustained by Chinese laws in different periods. As Ch’ü T’ung-tsu points out, Tang law stipulated that any senior who killed his disobedient descendants should be sentenced to penal servitude or the punishment that is one degree lighter than that for intentional murder. After the Tang dynasty, such an offence was punished even more lightly and even given a not guilty verdict in some occasions.²⁰⁶ During the late Ming period, when local lineages became a strong force in various social, cultural, political, and economic arenas, many lineages had enacted lineage regulations. Some

²⁰³ Na, *Qingdai zhongyang sifa shenpan zhidu*, 193–294.

²⁰⁴ See, for instance, *Ming shilu, Shenzong Shilu*, 36: 837–41, March 4, WL3 (1575).

²⁰⁵ Ch’ü T’ung-tsu 瞿同祖, *Zhongguo falü yu Zhongguo shehui* 中國法律與中國社會 (Law and Society in Traditional China) (Taipei: Liren shuju, 1984), 8–12, 33–34.

²⁰⁶ Ch’ü, *Zhongguo falü yu Zhongguo shehui*, 9.

scholars point out that the Ming local lineages had gradually possessed strong normative and local security features as community compacts and other state-sponsored organizations did.²⁰⁷ A variety of punishments were enacted within families, including monetary fines, confinement, beating with bamboo stroke, dramatic performance, feast compensation, and even expulsion from the family. Some lineages even enacted the death penalty against those members who committed banditry and murder, using the penalty of drowning and burying alive.²⁰⁸ Except for the controversies and conflicts among different branches, most families punished offences within the family without exposing domestic shame to others. Local government, on the other hand, did not intervene in family punishments as long as there was no disturbance or grievance that demanded the involvement of officials and other local groups.

However, even though lineages possessed strong power in organizing communal and family affairs, they were not allowed to exceed what authorities expected them to do. Some lineage punishments, including confinement and beating with bamboo strokes, were implicitly sanctioned by the authorities and society. On many occasions, local government allowed family heads and local mediators to mediate felony crimes and murder cases, as long as the victim's family did not argue and the conflict among the groups was not exacerbated. Such permission for families and communities did not

²⁰⁷ Chang Jianhua 常建華, *Mingdai zongzu yanjiu* 明代宗族研究 (Studies on Ming Dynasty Clans) (Shanghai: Shanghai renmin chubanshe, 2005), 258–306.

²⁰⁸ For recent studies on the lineage norms in the Ming and Qing Dynasties, see Chang, *Mingdai zongzu yanjiu*, 307–46; Chang Jianhua, “Lun Qingchao tuixing xiaozhi de zongzu zhi zhengce” 論清朝推行孝治的宗族制政策 (The Policy of Clan System for the Promotion of the Idea of Filial Piety in the Qing Dynasty), in Nankai daxue lishi yanjiusuo Ming-Qing shi yanjiushi 南開大學歷史研究所明清史研究室, ed., *Ming-Qing shi lunwenji (di er ji)* 明清史論文集(第二輯) (Collected Essays in Ming-Qing History, vol. 2) (Tianjin: Tianjin guji chubanshe, 1991), 257–72.

always include the death penalty, particularly when the disputes were reported to provincial or central authorities. As Chang Jianhua notices, after the long tolerance of the practice of family punishment, the Qing government started to prohibit the death penalty within families after the Qianlong emperor's reform.²⁰⁹ Non-lineage groups, including the state-sponsored community compacts, could not even execute their members, partly because they did not have ethical features and the moral of filial piety as lineages did. On most occasions, local officials opened one eye while closing the other as they had too many affairs to deal with and thus could only take an efficient and passive approach. But when controversies broke out, local officials had to investigate or adjudicate the case even though the disputes involved prestigious elites.

For example, in the late 1470s, a Jiangxi community compact organizer Lo Lun (羅倫; 1431–78) enacted death penalty laws for his community compact. Sources revealed that he always executed lineage members who committed robbery. He once executed two defiant members by drowning them in the river, triggering an outrage among villagers who then brought this case to the county magistrate. Lo's followers were punished in accordance with the murder laws. Lo passed away before the sentence, but his story was circulated and criticized across the nation.²¹⁰ Lo's case demonstrated that local authorities would not tolerate communal death penalties once the cases were reported to the government. Nevertheless, even though in official discourse the power of killing was repeatedly described as the state's prerogative, local authorities usually had to

²⁰⁹ Chang, "Lun Qingchao tuixing xiaozhi de zongzu zhi zhengce," 257–72.

²¹⁰ Lu Rong 陸容, *Shuyuan zaji* 菽園雜記 (Notes from the Legume Garden) (Beijing: Zhonghua shuju, 1985), 139–40.

consider all the factors regarding the effectiveness of local governance and the balance of powers among different groups.

One of the occasions where local officials exerted extrajudicial death penalties was in bandit suppression. In 1643, Zhou Qizeng (周齊曾), a county magistrate at Guangdong, received petitions about crop-stealing cases in a mountain area. He quickly arrested the robbers and then executed them by drowning in the river. Locals gave him loud applause, calling him an impartial judge.²¹¹ Such extrajudicial death sentences were not uncommon in the Ming-Qing period. Some informal capital punishment, including executions by heavy bamboo strokes (*zhangbi* 杖斃) and standing in a cage until death (*lijia* 立枷; also known as *zhanlong* 站籠), had been sanctioned by the imperial authorities throughout the Ming and Qing Dynasties.²¹² What made Qing practice different from the Ming practice was the increasing manipulation of informal punishments that eventually routinized the practice of these exceptional penalties.

All in all, although Chinese society had a long tradition of local punishment and militarized organizations, their authorities were mostly restricted to non-capital

²¹¹ Zhang Shouyong 張壽鏞 ed., *Siming congshu* 四明叢書 (Siming Collectanea) (Taipei: Guofang yanjiuyuan, 1966), di 4 ji, *Nangyun wenji* 囊雲文集 (The Collected Essays of Nangyun), *Yin xian zhi benzhuān* 鄞縣志本傳 (The Original Biography in Yin County Gazetteer), 1a–1b.

²¹² Suzuki Hidemitsu 鈴木秀光, “Zhangbi kao: qingdai zhongqi sixing anjian chuli de yixiang kaocha” 杖斃考：清代中期死刑案件處理的一項考察 (Execution by Heavy Bamboo Strokes: A Study of Mid-Qing Capital Punishment Procedure), in *Shijie xuezhe lun zhongguo chuantong falü wenhua, 1644–1911* 世界學者論中國傳統法律文化 (Recent International Scholarship on Traditional Chinese Law), ed. Zhang Shiming, Thomas Buoye, and Na Heya 娜鶴雅, 209–34 (Beijing: Falü chubanshe, 2010); Suzuki Hidemitsu, “Cong danxin dang’an kan qingchao houqi xingshi shenpan zhidu de yiban” 從淡新檔案看清朝後期刑事審判制度的一斑 (A Preliminary Study on the Practice of Late-Qing Criminal Justice: From the Case of Danxin Archive), conference paper, Academic Conference for Danxin Archive, National Taiwan University, Taipei, July 15, 2008

punishments, and their function in crime control could hardly surpass the local official's authority. Only in the suppression of bandits or on occasions when the government lacked sufficient resources in local defence, particularly in encounters with piracy, feuding, and rebellion, would these community organizations be able to punish or even execute criminals. However, after the nineteenth century, local militarization significantly altered the Chinese institution of summary execution and became an important element of Chinese capital punishment.

Conclusion

With the gradual consolidation of monarchical power, the Chinese criminal justice system featured strict control over the use of capital punishment. Both monarchs and bureaucrats had to go through a complicated procedure before executing criminals. The lingering process before the final sentencing made it difficult to kill convicts summarily. Even in the case of offences under the category of instant execution, completion of the entire reviewing procedure was required. The exceptions to this protracted review system gradually appeared in the late Ming and Qing Dynasties. As this chapter argues, three institutions— execution by flogging, the Shangfang Sword, and military law—emerged in the late Ming period and hastened the executions, particularly in the cases of urgent and military-related offenses. The centralized structure of capital case review was still maintained and even strengthened during the first half of the Qing dynasty. Yet in the mid-and-late Qing period, emperors gradually realized that a hastened procedure in death penalties was needed. Contrary to the practice of Shangfang Sword in the late Ming period, which was primarily based on the personal relation between

emperor and official, the Qing rulers started to use more efficient communicative instruments—the Grand Council and secret memorials—to facilitate preauthorized execution while also securing solid control of the bureaucracy. In the next chapter, I explore how the High Qing (circa 1684–1799) emperors were impelled to initiate a series of reforms in the system of capital punishment. These reforms included the increasing use of king's order, the management of informal death penalties, and the gradual promotion of local armed forces. They emerged in the eighteenth century and eventually prevailed in the nineteenth century.

Chapter 2: Monarchical Power and Judicial Expediency: The Reform from

the Top

In Sichuan, the *lu* bandits had long inundated the province. These bandits gathered a crowd and committed assault. They had gradually restrained themselves after our large-scale suppression, but now Fu Xingfu appeared. He beat three persons and killed them and then murdered another one.... [Facing such a heinous crime,] the Governor should naturally submit a memorial to me while carrying out the execution [without the final central adjudication]. Only prompt execution could deter the villains and make them feel vigilant and prudent. There's no need to stick to the rules or request an edict granting immediate execution. Those procedures would only cost plenty of time [and help nothing at all]. 四川向多嚙匪犯，聚眾行兇。自大加懲創之後，近年漸覺斂戢。今符興復輒毆殺三命，又故殺一命。.....自應一面奏聞，一面將該犯正法，使兇徒共知懲惕。何必拘泥請旨，又致往返需時。— The Qianlong emperor²¹³

On a summer day in 1794, the Qianlong emperor was annoyed by a Henan murder.²¹⁴ A man named Song Cheng (宋成) killed four members of woman Su-Laohu's (蘇老胡氏) family. The Henan officials conducted investigations and were preparing for a final report. According to the Qing law, governors should report such heinous crimes to the central judicial authorities for further adjudication. However, only a few years earlier the emperor had instructed adoption of the procedure of “submitting a memorial to the throne but invoking the king's order for carrying out execution at the same time” (*yimian*

²¹³ *Qing shilu, Gaozong shilu*, 1307: 609a, June 26, QL53 (1788; QL = Qianlong reign).

²¹⁴ For the details of the Qianlong emperor's comment on this case, see *Qing shilu, Gaozong shilu*, 1457: 424a–424b, July 17, QL59 (1794).

zouwen yimian gongqing xianxing zhengfa 一面奏聞一面恭請王命先行正法).²¹⁵ This made the Henan Governor Muhelin (穆和蘭) hesitant in taking his next step. Only several months earlier, the Governor General of Fujian and Zhejiang Wulana (伍拉納) petitioned for an edict granting immediate execution (*qingzhi jixing zhengfa* 請旨即行正法) for offenders who resisted arrest and injured the arrester.²¹⁶ The Qianlong emperor was angered by the petition because according to his earlier instructions such cases were not eligible for immediate execution application unless they occurred in borderlands, particularly in Taiwan.²¹⁷ He then fiercely condemned Wulana on various occasions, and even sent him to the Board of Personnel for consideration of punishment.²¹⁸ Wulana's tragic experience aroused Muhelin's anxiety about the case he was handling. There was too much uncertainty ahead, particularly when such a thorny affair was still in discussion around the court. Any misapplication of execution procedures might incur the emperor's denunciation. After contemplation, Muhelin decided to petition for the same procedure Wulana requested. The petition procedure was quicker than the regular judicial review but slower than the "at the same time" execution. This seemed to be safe because Muhelin did not execute the offender before the throne granted permission. No one knew

²¹⁵ Xue Yunsheng 薛允升 and Huang Jingjia 黃靜嘉, eds., *Duli cunyi chongkanben* 讀例存疑重刊本 (Questions about the Laws of the Qing Dynasty: A Reprint and Annotated Version) (Taipei: Chengwen, 1970), *juan* 33, *xinglü* 9, *renming* 2, *sha yijia sanren* 09.

²¹⁶ See *Qing shilu, Gaozong shilu*, 1447: 303a–305b, February 23, QL59 (1794); *Qing shilu, Gaozong shilu*, 1449: 323a–323b, March 17, QL59 (1794). Translations of Qing statutes are taken from William C. Jones, trans., *The Great Qing Code* (Oxford: Clarendon Press, 1994), 361.

²¹⁷ *Qing shilu, Gaozong shilu*, 820: 1130a–1131a, October 7, QL33 (1768); *Qing shilu, Gaozong shilu*, 823: 1179b–1180a, November 26, QL33 (1768); *Qing shilu, Gaozong shilu*, 1169: 683b–684b, November 29, QL47 (1782).

²¹⁸ *Qing shilu, Gaozong shilu*, 1447: 303a–303b, February 23, QL59 (1794); *Qing shilu, Gaozong shilu*, 1449: 323a March 17, QL59 (1794).

what the aging emperor was thinking. Muhelin could only see if he were lucky enough to receive permission.

Unfortunately, the test turned out to be a failure. Actually, such cautiousness invoked the emperor's rage. The Qianlong emperor contended that Muhelin's request was "sticking to the rules" (*juni* 拘泥). The petition was safe as the requester had not executed the criminal, but the manner did not match the severity of the crime as the emperor himself had explicitly challenged the current law by permitting summary execution for such crimes. The Qianlong emperor did wish that the borderland's severe punishment was not abused in regular cases, yet he expected faster justice in the case Muhelin handled. Any violator engaged in piracy, banditry, and killing of three to four members of a family should be punished instantly, not to mention that Muhelin's case was committed by an "insane offender" (*fengfan* 瘋犯). Using this case, the Qianlong emperor exhorted governors not to be hesitant in encounters with such heinous crimes. The regular procedure or sped-up petition would not be enough for crimes like Song Cheng's. The proper response to such a serious and intolerable offence was "carrying out a correct and prompt punishment" (*jizheng dianxing* 即正典刑).

Only one year later, the Qianlong emperor's instruction was enacted in statutes. The crime of killing three or more members of a family was now legislatively subject to execution prior to the emperor's permission. Such sped-up procedure was not uncommon during the Qianlong reign (1735–1795). Summary procedures had been suggested for various types of crimes, ranging from cases of unfilial murder, army desertion, prisoner escape, and mass riot to occasions of banditry and robbery. The codification was significant in more than its form. The Qianlong reign officially came to an end in 1795,

and the enacted law appeared to be one among the few statutes for summary execution throughout the long period of the Qianlong emperor's rule. It is a concluding remark for a prolonged judicial reform that carried a symbolic meaning to the succeeding Jiaqing emperor. The eventual codification equipped the empire with the capacity to react promptly to emerging social conflict and judicial backlog that had eroded the foundation of the prosperous empire. Had their reforms not taken place, emperors would have to count on edicts and memorial correspondences repeating the same lessons toward the treatment of heinous crimes. Indeed, the entire reform was at risk of leaving authority to the rising regional governors. But the emperors utilized the extended "king's order" (*wangming* 王命) as a means of demonstrating imperial authority to the bureaucrats and society. It is at this critical moment that the institutionalized exceptional procedure became an important asset to the emperors and officials at various levels within the bureaucracy. As we will see, the reform in capital punishments eventually led to a significant political and legal transformation before the tremendous challenges from both domestic and foreign forces.

Before the Qing dynasty, the centralized and standardized criminal system left little room for speeding up the procedure. Only in the late Ming turmoil did the use of preauthorized death penalties become frequent. The early Qing rulers further extended the centralized judicial system by developing the reviewing procedure of capital cases. However, during the eighteenth century, the new social and economic changes challenged the existing protracted judicial system. The prosperous Qing Empire reached its peak with both demographic and economic expansion, and then encountered a flood of

challenges resulting from its innate dynamics.²¹⁹ By 1794, the nation's population reached over 313 million, doubling the population of a century earlier.²²⁰ The explosive population created a series of social problems, including scarcity of land, an increased number of vagrants and “rootless rascals” (*guanggun* 光棍; literally “bare sticks”),²²¹ emerging migration and conflicts between indigenous people and migrants, and a flood of litigations and popular protests.²²² The multitiered reviewing system and the legislation of new capital crimes worsened the already delayed executions at the annual Autumn Assizes, making what Thomas Buoye calls “lingering imprisonment” a real epidemic in all levels of prisons.²²³ In the end, the imperial center extended its authority through the use of militarized judicial procedure, particularly targeting what the government called the “rootless rascals” and “wicked people” (*diaomin* 刁民; or hecklers) during the eighteenth century.²²⁴

²¹⁹ Susan Naquin and Evelyn S. Rawski, *Chinese Society in the Eighteenth Century* (New Haven: Yale University Press, 1987), 222–32.

²²⁰ Naquin and Rawski, *Chinese Society in the Eighteenth Century*, 106–12.

²²¹ Considering both social and legal meanings of the term *guanggun*, Matthew Sommer argues that “rootless rascals” is a more idiomatic translation than “bare sticks.” See Matthew Sommer, *Sex, Law, and Society in Late Imperial China* (Stanford: Stanford University Press, 2000), 97.

²²² On the rise and institutionalization of popular protest during the mid-Qing period, see Hofung Hung, *Protest with Chinese Characteristics: Demonstrations, Riots, and Petitions in the Mid-Qing Dynasty* (New York: Columbia University Press, 2011). On the practice of capital appeal during the Qing dynasty, see Li Dianrong 李典蓉, *Qing chao jingkong zhidu yanjiu* 清朝京控制度研究 (Capital Appeals during the Qing Dynasty) (Shanghai: Shanghai guji chubanshe, 2011); Jonathan K. Ocko, “I’ll Take It All the Way to Beijing: Capital Appeals in the Qing,” *Journal of Asian Studies* 47, no. 2 (1988): 291–315.

²²³ Thomas Buoye, “Death or Detainment: The Dilemma of Eighteenth-century Chinese Criminal Justice,” paper presented at the International Workshop on Chinese Legal History, Culture and Modernity, Columbia University, May 4–6, 2012.

²²⁴ Here, I want to thank Professors Kent Guy, Timothy Brook, Timothy Cheek, Josephine Chiu-Duke, and Francesca Harlow for their valuable suggestions about the production of social class, the cliché of “prosperity,” and the military and political circumstances under which Qianlong

In this chapter, I first discuss how the institution of preauthorized execution transformed during the Ming-Qing transition, particularly from the Ming institution of “banner plaque” (*qipai* 旗牌) to the Qing distinct summary execution procedure called “king’s order” (*wangming* 王命). The gradual shift from banner-plaque to king’s order demonstrates how a preauthorized execution power was gradually taken back by the emperors, who had used this procedure as an important instrument of judicial reform and bureaucratic communication. The second section of this chapter explores how Qing rulers inherited the Ming institution of execution by flogging. The Yongzheng emperor was the first Qing emperor to legalize this punishment. His elaboration of the circumstances in which regional officials should carry out this extraordinary punishment laid the foundation for summary execution reform in the Qianlong reign. The third section discusses the campaign against the emerging underclass and demonstrators. In the eyes of the Qing rulers, the rapidly increased challenges from unruly subjects constituted an urgent threat to the state. The inefficiency of the protracted judicial review system enhanced emperors’ worries and forced them to take a radically different approach from their Ming predecessors. As a result, the Qing emperors, particularly the Qianlong emperor, increased the severity of the Ming punishment for “rootless rascals” (*guanggun* 光棍) and extended the scope to a broadly-defined “wicked people.” Moreover, while the trend of increased summary execution revealed how the Qianlong emperor attempted to get rid of legal restrictions and adjust the speed of sentences, the laws regarding rootless rascals and wicked people provided the basis for governors to request sped-up execution.

developed his approaches toward the “wicked people” and the use of summary execution. I will further explore these dimensions in my future revision of this dissertation into a monograph.

In the third section, I discuss how the Qianlong emperor legitimized and defended his policy of summary execution through instructions to his officials. The ambitious emperor faced some challenges from the officials and the society, including advice from the imperial censor and rumours among the populace. The emperor decided to strike back against the dissenting voices. His defence of judicial expediency and the creative approach that combined both regular and exceptional procedures offer a valuable window into the initial surge of sped-up execution. His efforts provided an important foundation for the subsequent Jiaqing emperor to institutionalize the procedure of summary execution.

The Making of “King’s Order”

As a non-Han regime that ruled the vast empire and Han Chinese majority, the Manchu ruler had extensively absorbed Ming institutions. The rising regime inherited the centralized criminal justice and well-structured government system. However, some institutions with distinct Qing characteristics, such as the procedure of “banner-plaque representing king’s order” (*wangming qipai* 王命旗牌), the symbolic “Ebilun’s Saber” (*Ebilun dao* 遏必隆刀),²²⁵ and the special laws governing offences among Manchus,²²⁶

²²⁵ Ebilun was a powerful military officer during the Kangxi reign. His saber remained in the court during the Qianlong reign. During the Battles of the Jinchuan, Ebilun’s grandson Naqin (訥親) mistakenly missed the opportunity to suppress enemies. The Qianlong emperor then used Ebilun’s Saber, which was supposedly viewed as a powerful symbol during that time, to kill Naqin in front of the soldiers. The Saber was later used in the suppression of Taiping rebels. Although few records exist regarding the use of this Saber, it was perceived to be the equivalent of the Shangfang Sword during the Qing dynasty. See Xu Ke 徐珂, *Qing bai lei chao* 清稗類鈔 (Classified Anthology of Qing Anecdotes) (Beijing: Zhonghua shuju, 1984), 6006–6007.

were also developed and made the Qing death penalty differ from its Ming predecessor. Compared to these institutions, “banner-plaque representing king’s order” contained both Ming and Qing characteristics and had a great impact on the development of Chinese summary execution. It had a wider range than the Ming dynasty’s Shangfang Sword and banner-plaque. It gradually became epidemic and brought hastened execution procedures from the military realm into the civilian sphere. Moreover, it was no longer an instrument for coping with suppression and urgent events. Instead, it was a product of the changing emperor-official relationship in the Qing, particularly under the trends of expanding monarchy, strengthening governors, and improved techniques of bureaucratic communication.

To better understand this system, it is necessary to look back at the centralization of the death penalty and its correlation with monarchical power. During the late imperial period, the bulky procedure of reviewing capital cases was an essential part of the empire’s centralization project. It helped the emperor to strictly control the adjudication process. However, it also restricted the emperor’s power of discretion in actual practice. One of the most important judicial institutions was the Autumn Assizes, the last step of the reviewing procedure for capital cases. The Qing successor developed the system based on the rules of the late Ming and created a further detailed classification within the system. Core to the procedure was the monarch’s power of final review, which, as in the previous dynasties, reinforced the ultimate power of the emperor. Through this system, the emperor was able to make decisions on execution, deferment, or pardon, based on reports from central judicial officers with a thorough examination of statutory laws and

²²⁶ See, for instance, *Qing shilu*, *Shizong shilu*, 44: 640b–641a, May 1, YZ4 (1726; YZ = Yongzheng reign).

former precedents. The imperial law, at both practical and theoretical levels, represented the ultimate authority and prerogative of the emperor who claimed to hold the Mandate of Heaven and stood at the top of the entire legal system.²²⁷

However, in the actual practice of adjudication, the emperor's power encountered a series of institutional and ideological restrictions, including those that derived from the Autumn Assizes. When regional authorities reported cases to the Board of Punishment, judicial officials would meet and conduct a thorough and sophisticated legal reasoning for each case. They would decide which cases should advance to the annual Autumn Assizes based on their investigation and the reports of provincial governments. The selected cases were then re-allocated according to their plots and seriousness, and the emperor's final decisions—whether or not these executions should be carried out, deferred, or transferred to other punishments—were to a great extent dependent on the official's report and classification. The emperor certainly had the power to adjust the punishment and guide the officials in adjudicating cases. He could either aggravate the punishment to express his hostility against certain offences or defer the execution or grant amnesty the convicts to show his mercy. However, every aspect would have a profound impact upon the ruling of the government. Even the numbers of executions would reflect his attitude toward subjects; not to mention that people had expectations regarding how the imperial court would react to serious or sensational cases. Here, the stability of rule and the expectations of subjects were essential factors in decisions regarding execution. Moreover, facing the complexity and large volume of cases annually, particularly those

²²⁷ On the manifestation of the Mandate of Heaven in imperial Chinese law, see Younglin Jiang, *Mandate of Heaven and the Great Ming Code* (Seattle: University of Washington Press, 2013).

being reviewed for multiple years, even the emperors would have to stick to the established criteria or follow the advice of central officials.

The imperial law and bureaucratic system had restricted the power of the emperor in adjudication and law enforcement. The operation of government relied extensively on official communication systems, such as the imperial memorial (*zouyi* 奏議), but the well-developed memorial system also prevented the throne from hearing the details, particularly those regarding local affairs and the views of different levels of officials. In order to circumvent these restrictions, the Qing rulers created new institutions, including the Grand Council and palace memorials (*zouzhe* 奏摺).²²⁸ The former assisted the emperor in state administration and policy-making; the latter allowed the emperor to communicate directly with local officials and avoid bureaucratic filters, also through the medium of the Grand Council. As the following analysis reveals, these institutions greatly influenced the Qing dynasty's judicial review process for the cases involving heinous crimes and urgent situations. "King's order" (*wangming* 王命) was one of the most important products of this trend of new bureaucratic institutions and changing monarch-bureaucrat interactions.

As its name implies, the king's order represented the command of the monarch. This institution was used to authorize officials to execute convicts in urgent situations or cases when the existing system could not work properly. Its name, "king's order," can be traced to the pre-Qin period and is associated with either the ruler's command

²²⁸ On the reforms to bureaucratic communication during the Qing dynasty, see Beatrice S. Bartlett, *Monarchs and Ministers: The Grand Council in Mid-Ch'ing China, 1723–1820* (Berkeley: University of California Press, 1991); Silas H. L. Wu, *Communication and Imperial Control in China: Evolution of the Palace Memorial System, 1693–1735* (Cambridge: Harvard University Press, 1970).

(“Mandate”) or the notion of “execution by the King” (*wangzhu* 王誅).²²⁹ Dynastic rulers used a number of symbolic items to authorize officials or military commanders to punish or suppress bandits or outlaws in an expedient way. “King’s order” was closely associated with one of these items, namely, the “banner-plaque.” The banner-plaque appeared as an important institution during the Ming but was gradually replaced by “king’s order” thanks to the expansion of monarchical power and the introduction of the Grand Council and palace memorials.

How was the banner-plaque used in the practice of the death penalty? Ever since its appearance, particularly after the Sui dynasty, the banner-plaque was granted to the military commander before major military actions. The banner was made in the form of a plaque probably because it had written texts shown to commoners, enemies, and even to Heaven.²³⁰ During the Song dynasty, for instance, a number of “banner-placards” (*qibang* 旗榜) were awarded to military officers for handling affairs on behalf of the imperial court. Enemy troops had to see a written object to convince them that the other side possessed legitimate authority from the centre. The instrument allowed the bearers to command the military, suppress bandits, and amnesty surrendered troops, while other officials were strictly prohibited from recruiting surrendered troops. It usually accompanied other sacred items such as the gold plaque (*jinzipai* 金字牌), flag-attached

²²⁹ Ruan Yuan 阮元, *Chongkan songben shisanjing zhushu fu jiaokan ji* 重刊宋本十三經注疏附校勘記 (The Reprinted Edition of Song Commentary on the Thirteen Classics with Notes of Emendation) (Taipei: Yiwen yinshuguan, 1965 reprint), 98b–99a, 104a–104b.

²³⁰ Kun Gang 崑岡 et al., *Da Qing huidian shili* 大清會典事例 (The Precedents of the Collected Statutes of the Great Qing) (Beijing: Zhonghua shuju: 1991), vol. 10, 329a–329b.

arrow (*lingjian* 令箭), and command tablet (*lingpai* 令牌).²³¹ Usually, the plaque was held by an official messenger, whose title was *qipai* or Banner-Plaque Officer (*qipai guan* 旗牌官). But the major tasks of this official were much more than holding the plaque. He was in charge of conveying messages and communicating between units. In some occasions, he was even tasked with detecting information and investigating incidents that were significant to the troops.²³²

During the Ming dynasty, the use of banner-plaques became frequent. Commanders dispatched to frontlines or borderlands could request the plaques. Once the emperor approved, the Ministry of Works produced the desired number of plaques and awarded them to the recipients.²³³ Since regional officers might not agree with each other and their bases were far away from the imperial centre, the banner-plaques were usually assigned to the chief commander in charge of the area and military divisions. The recipients were restricted to the Regional Commander (*zongbing* 總兵), the Deputy Regional Commander (*fuzongbing* 副總兵), and, in later days, the Grand Coordinator (*xunfu* 巡撫).²³⁴ Lower-rank officers, such as the Brigade Commander (*youji* 游擊),

²³¹ See, for instance, Xu Song 徐松, *Song huiyao jigao* 宋會要輯稿 (The Manuscript Compendium of Essential Song Dynasty Documents) (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 2008), *zhiguan*, *zhiguan* 41, 2; Xu, *Song huiyao jigao*, *bing*, *bing* 13, 7; Xu, *Song huiyao jigao*, *bing*, *bing* 13, 9.

²³² Song Shou 宋綬, *Zhao ling zouyi* 詔令奏議 (The Collection of Imperial Edicts and Memorials) (Beijing: Zhonghua shuju, 1962), 19a–24a.

²³³ *Ming shilu* 明實錄 (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 1966 reprint), *Xuanzong shilu*, 23: 623, December 28, XD1 (1426; XD=Xuande reign); *Ming shilu*, *Wuzong shilu*, 21: 603, January 23, ZD2 (1507; ZD = Zhengde reign); *Ming shilu*, *Wuzong shilu*, 93: 1987, October 28, ZD7 (1512).

²³⁴ While the terms *zongdu* (總督) and *xunfu* appeared in both Ming and Qing Dynasties, their tasks were largely different. The Ming's *zongdu* (Supreme Commander) and *xunfu* (Grand Coordinator) were primarily in charge of military affairs; the Qing Governor's work combined

Commandants (*shoubei* 守備), Company Commander (*qianzong* 千總), and Squad Leader (*bazong* 把總), were not allowed to receive this item even though they possessed certain authority to command troops. As the Hongzhi emperor (reign: 1487–1505) stated, the banner-plaque was given to the Regional Commander because “all the assignments and deployments had to follow his command so that the execution of policy and the regulation of the system were unified under the same authority” (*yu you diaoqian, ting qi haoling, gu shi ti guiyi* 遇有調遣, 聽其號令, 故事體歸一).²³⁵ To the imperial centre, the banner-plaque was not only for “expedient arrangement” (*jia yi bianyi* 假以便宜) on the frontline²³⁶ but also for “strengthening the military discipline” (*yi su junling* 以肅軍令).²³⁷ In order to strengthen discipline, commanders frequently used the banner-plaque to summarily execute subordinates following military justice procedures.²³⁸ Wang Chonggu (王崇古, 1515–1588), one of the eminent commanders on the Ming’s northwest borders, once argued that,

The imperial court should grant all Defence Command chiefs banner-plaques so that they can work closely with the Regional Commander and Military Superintendent (*tidu junwu* 提督軍務). With the authority of banner-plaques, commanders could immediately execute Assistant

both military and administrative tasks. For the transformation of governors during the Qing, see R. Kent Guy, *Qing Governors and Their Provinces: The Evolution of Territorial Administration in China, 1644–1796* (Seattle: University of Washington Press, 2010).

²³⁵ *Ming shilu, Xiaozong shilu*, 21: 499–500, December 28, HZ1 (1488; HZ = Hongzhi reign).

²³⁶ *Ming shilu, Shenzong shilu*, 242: 4520, November 20, WL19 (1591; WL = Wanli reign).

²³⁷ *Ming shilu, Shenzong shilu*, 180: 3354–3355, November 8, WL14 (1586).

²³⁸ *Ming shilu, Shizong shilu*, 364: 6487–6488, August 17, JJ29 (1550; JJ = Jiajing reign).

Commanders (*fucan* 副參) and Mobile Corps Officers (*youshou* 游守) if they were timid during battle. When Company Commanders and Squad Leaders commit offences, commanders can carry out military justice procedures. When subordinates disobey orders, they can be instantly beheaded in public. 必須各鎮撫臣頒賜旗牌，俾得會同總兵、提督軍務，凡遇戰陣，副參游守等官退怯者，先取死罪招繇；其各營中軍千把總等官，軍前得以軍法從事；標下官軍違令，立斬以徇。²³⁹

While the emperor granted both the Shangfang Sword and the banner-plaque to high-ranking officials—usually military commanders—they operated on largely different bases. The former aimed to punish unruly high-ranking officers. It was primarily based upon the emperor’s trust toward sword bearers. Only when the throne found it necessary would the sword be granted. In contrast, with some exceptions, the banner-plaque was granted to every Regional Commander dispatched to far places or perilous frontlines—as long as they made a request. It could be used in the cases of lower-ranking soldiers, whereas it was unnecessary to resort to the Shangfang Sword in such trivial affairs. In theory, “wherever the banner-plaque appeared, it worked as an imperial edict; officials had to kneel in the road to welcome the arrival of the banner-plaque; they dared not show any neglect to the sacred item” (*qipai suo zhi, ji tong zhao chi; guanli yingfu, wugan weiman* 旗牌所至，即同詔敕。官吏迎伏，無敢違慢。). But it did not primarily serve

²³⁹ Chen Zilong 陳子龍, *Ming jingshi wenbian* 明經世文編 (The Collected Writings on Statecraft of the Ming Dynasty) (Beijing: Zhonghua shuju, 1962), *juan* 319, 3391b–3392b.

as a symbol of status or instrument of political struggle. Neither was it expected to “kill the disloyal and treacherous persons” as was the Shangfang Sword.²⁴⁰

Since the banner-plaque was a symbol of command and execution, the imperial court imposed strict control over its use. Many requests from officers lower than Brigade Commander were rejected. Only in a few instances, such as the change of an applicant’s position, would the court grant the plaque—but usually in a relatively secret way instead of by public announcement or imperial edict.²⁴¹ However, during the latter half of the dynasty, the problem of the abuse of the banner-plaque gradually emerged. The major reason behind this trend was the increased social revolts and rebellions that forced the imperial centre to deploy more troops to far places.

In 1445, for example, the Left Commissioner-in-Chief (*zuo dudu* 左都督) Yang Hong (楊洪), who was then in charge of defending against potential Mongol attack, requested banner-plaques from the court. Yang had tremendous achievements in previous battles, but his rank was not eligible for a banner-plaque, so the court rejected his request. Yang then secretly produced twenty short banners and twenty wooden plaques. This caught the attention of the imperial censor and brought him several impeachments, but the emperor did not punish Yang for his misconduct.²⁴² Four years later, when the devastating Tumu Incident erupted, Yang was assigned to fight the Mongols. He requested banner-plaques, and the court granted ten plaques so that he could easily command the troops. Yang then won significant battles, and no other officials

²⁴⁰ Liu Ji 劉基, *Liu Ji ji* 劉基集 (Collected Works of Liu Ji) (Hangzhou: Zhejiang guji chubanshe, 1999), 348–49.

²⁴¹ See, for instance, *Ming shilu*, *Wuzong shilu*, 23: 633, February 3, ZD2 (1507).

²⁴² *Ming shilu*, *Yingzong shilu*, 128: 2555, April 8, ZT10 (1445; ZT=Zhengtong reign).

complained about his previous behaviour.²⁴³ In 1465, the Minister of the Board of War reported that General Zhao Sheng (趙勝) and his subordinate Zou Sheng (鄒勝) offered profits to acquaintances and even plotted to acquire additional banner-plaques.²⁴⁴ The imperial court did not further respond to the admonishment probably because Zhao had great accomplishment as a general, and the imperial court needed him to suppress the upcoming revolts in the north. Both cases indicate that a more expedient way of commanding troops was needed in the midst of revolts. After the Tumu Incident, the Ming government repeatedly announced that any illegal reproduction of banner-plaques would be seriously punished.²⁴⁵ But the court at times granted multiple plaques to commanders during warfare.²⁴⁶ During the latter decades of the Ming dynasty, the imperial court gradually increased the number of banner-plaques and extended the grantees to include the Grand Coordinator. Even Wang Chonggu, who supported the use of banner-plaques, admitted that the plaques were overused and military discipline could hardly be maintained.²⁴⁷

After the fall of the Ming dynasty, the banner-plaque system was inherited and developed by the Qing government. Although the term “banner” seemed to carry some Manchu characteristics, the banner-plaque operation was not directly connected with the Manchu’s “Eight Banners” (*baqi* 八旗), and it did not extend to social and household

²⁴³ *Ming shilu*, *Yingzong shilu*, 179: 3474, June 23, ZT14 (1449).

²⁴⁴ *Ming shilu*, *Xianzong shilu*, 13: 301, January 26, CH1 (1465; CH = Chenghua reign).

²⁴⁵ See, for instance, *Ming shilu*, *Wuzong shilu*, 45: 1038, December 27, ZD3 (1508); *Ming shilu*, *Wuzong shilu*, 93: 1987, October 28, ZD7 (1512); *Ming shilu*, *Wuzong shilu*, 141: 2773–75, September 3, ZD11 (1516).

²⁴⁶ *Ming shilu*, *Shizong shilu*, 221: 4579, February 7, JJ18 (1539).

²⁴⁷ Chen, *Ming jingshi wenbian*, *juan* 339, 3391b—3392a.

divisions as the latter did.²⁴⁸ In 1645—the second year the Shunzhi emperor ruled the country—the emperor approved the Ministry of Works’ suggestions that rewarded banner-plaques to the following officers: twelve banner-plaques to the Supreme Commander of the Capital Training Divisions (*jingying zongdu* 京營總督), ten banner-plaques to other Governors-general and Regional Commanders, eight banner-plaques to Provincial Military Commanders (*titu* 提督), six banner-plaques to Governors (*xunfu* 巡撫), five banner-plaques to Regional Vice Commanders (*zongbing fujiang* 總兵副將), and three banner-plaques to Assistant Regional Commanders (*canjiang* 參將) and Brigade Commanders.²⁴⁹ The granting of banner-plaques apparently followed the Ming institution, except that the Qing extended the scope of recipients. The position of Banner-Plaque Officer also remained and was incorporated into the Qing dynasty’s military system.²⁵⁰ However, ever since the introduction of the banner-plaque, the Qing rulers had linked it with “king’s order,” a procedure that allowed the emperor to instruct officials directly in decisions on the death penalty.

The subtle change from “banner-plaque” to “banner-plaque representing king’s order” was not simply a matter of semantics. As the Yongzheng emperor argued, the banner-plaque represented both regional and central authorities as it was used to “strengthen the power of regional officers and enhance the prestige of the imperial court”

²⁴⁸ On the evolution of the Eight Banners, see Pamela K. Crossley, *A Translucent Mirror: History and Identity in Qing Imperial Ideology* (Berkeley: University of California Press, 2002); Mark Elliott, *The Manchu Way: The Eight Banners and Ethnic Identity in Late Imperial China* (Stanford: Stanford University Press, 2001); Edward J. M. Rhoads, *Manchus and Han: Ethnic Relations and Political Power in Late Qing and Early Republican China, 1861–1928* (Seattle: University of Washington Press, 2000).

²⁴⁹ *Qing shilu, Shizu shilu*, 19: 167b–168a, July 5, SZ2 (1645; SZ = Shunzhi reign).

²⁵⁰ *Qing shilu, Shizu shilu*, 127: 991a, August 22, SZ16 (1659); *Qing shilu, Shizu shilu*, 129: 1002a–1002b, October 28, SZ 16 (1659).

(*suoyi zhong jiezhen zhi quan, chong tianshi zhi wei ye* 所以重節鎮之權, 崇天室之威也).²⁵¹ Moreover, as our later analysis reveals, the Qianlong emperor and his succeeding emperors gradually replaced the banner-plaque with the king's order. The gradual shift demonstrates how the emperors, who had become increasingly involved in regional adjudication of capital cases and further initiated reforms on the punishment of certain crimes, gradually took back a preauthorized execution power.

Although no source indicates when the two notions were first linked, one can be sure that the king's order had been attached to the newly introduced banner-plaque system as early as the Shunzhi reign. According to *The Precedents of the Collected Statutes of the Great Qing* (*Da Qing huidian shili* 大清會典事例), the “banner-plaque representing king's order” became an imperial military instrument (*junqi* 軍器) during the early years of the Shunzhi period. The banner was painted in blue and was made as a square with 2 *chi* (1 *chi* is approximately equal to 32 cm) and 6 *cun* (1 *cun* is approximately equal to 3.2 cm) on each side. The plaque was made of wood, measuring 1 *chi* and 2 *fen* in length and hung on an 8-*chi* long spear. Both sides of the banner and plaque were carved with Manchu and Chinese characters.²⁵² The same description appears in the *Illustrations of the Collected Statutes of the Great Qing* (*Da Qing huidian tu* 大清會典圖) with the following illustration²⁵³:

²⁵¹ *Qing shilu, Shizong shilu*, 33: 501a–501b, June 9, YZ3 (1725).

²⁵² Kun, *Da Qing huidian shili*, vol. 10, 329a–329b.

²⁵³ Liu Qiduan 劉啓端, *Da Qing huidian tu* 大清會典圖 (Illustrations of the Collected Statutes of the Great Qing) (Hefei: Huangshan shushe, 2008 reprint), *juan* 106, wubei 16.

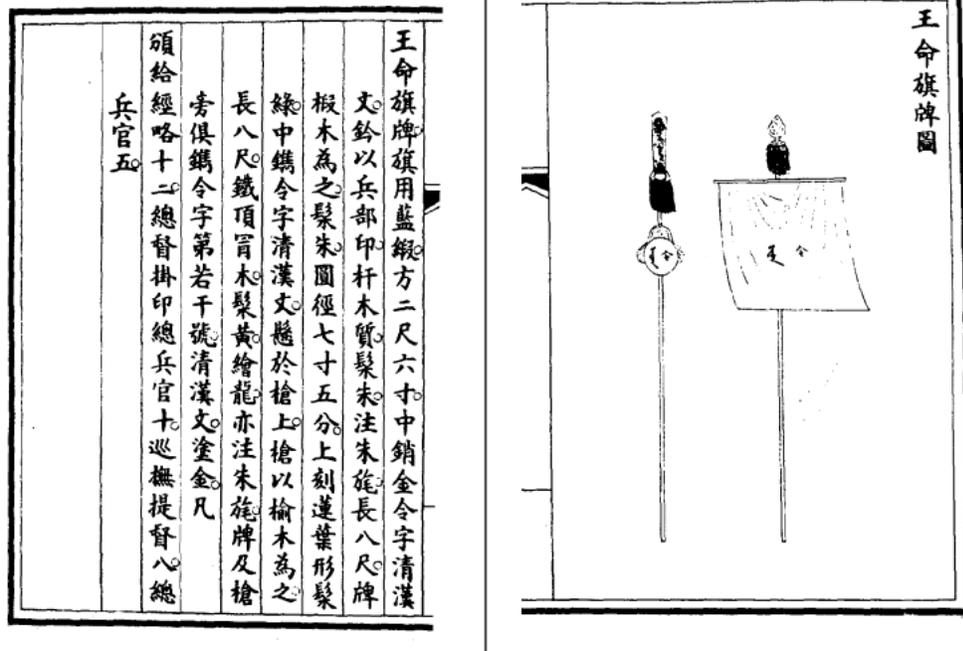


Figure 2.1. “The Illustration of Banner-plaque Representing King’s Order.”

Illustration from *Da Qing huidian tu*.

Both emperors and officials regarded banner-plaque representing king’s order seriously. The recipients usually conducted solemn ceremonies, refraining from meat beforehand and preparing the table with incense and necessary items to welcome the arrival of the banner-plaques.²⁵⁴ They would be seriously punished and deprived of six months’ salary if their items were broken or rusted.²⁵⁵ Some officials even duplicated the

²⁵⁴ Kun, *Da Qing huidian shili*, vol. 7, 4781; Wu Yuanbing 吳元炳, *San xian zhengshu* 三賢政書 (Political Writings by the Three Worthies) (Taipei: Taiwan xuesheng, 1976 reprint), 4a–5b.

²⁵⁵ Qing Gaozong (Qianlong) 清高宗, *Qing chao wenxian tongkao* 清朝文獻通考 (Comprehensive Examination of Literary and Documentary Sources in the Qing Dynasty) (Taipei: Taiwan shangwu yinshuguan, 1987), *juan* 194, bingkao 16, 6581b; Yun Tao 允禔, *Qinding Da Qing huidian* 欽定大清會典 (The Imperial Compilation of the Collected Statutes of the Great Qing) (Hefei: Huangshan shushe, 2008 reprint), *juan* 73, 42.

items and placed the original ones in storage with careful maintenance and protection.²⁵⁶

However, if they had done their utmost and the damage still happened, especially on occasions of flooding and fire, they could explain to the throne and beg for pardon.²⁵⁷

Although “banner-plaque representing king’s order” had been viewed as symbols of imperial authority ever since the mid-eighteenth century, particularly during and after the Qianlong reign, the appearance of the king’s order had been far more frequent than that of the banner-plaque. Even if the imperial court had granted the banner-plaque to regional authorities, emperors and officials usually resorted to the king’s order when they intended to carry out summary executions. There are many reasons for this phenomenon, the most important of which is the establishment of the imperial memorial and Grand Council systems. The Qianlong emperor was lucky enough to have both institutions in place before he came to power. He required local officials to report every significant affair and serious crime to the court through the new communication channels. He also used the same channels to instruct officials and decided the death penalty without going through the conventional review process. The rapidly increased population and subsequent social conflicts forced the Qianlong emperor, who was noted for his strong and ambitious personality, to take severe approaches, including the informal punishment called “execution by flogging,” in the campaigns against newly emerged social problems.

²⁵⁶ *Qing shilu, Shizong shilu*, 33: 501a–501b, June 9, YZ3 (1725).

²⁵⁷ *Qing shilu, Gaozong shilu*, 644: 207b, September 11, QL 26 (1761).

The Evolution of Execution by Flogging

Based on the Ming dynasty's centralized judicial system, the Qing government developed a more protracted and complicated reviewing procedure for capital cases. Under this system, execution by flogging was by no means an accepted method of punishment. Although the emperors apparently valued the maintenance of public security over the issue of the abuse of power and punishment, they did not explicitly support informal punishments. Unless an exceptional statute had been established, the imperial centre usually expressed its objection to the excessive use of the bamboo stroke. During the early years of the Shunzhi reign (1644–1661), Yao Qisheng (姚啟聖), a scholar who had been insulted by a local bully before he became an official, used flogging to execute this bully right after he came to the position of magistrate. He was then forced to quit officialdom because excessive use of flogging was not allowed under the Qing legal system, although he later managed to serve in the military and contributed to the suppression of the Revolt of the Three Feudatories.²⁵⁸ Contrary to the mid-Ming policy that resorted to extreme punishment against the use of execution by flogging, the early Qing rulers at times pardoned convicts while in official discourses retaining their attitude of condemning execution by flogging. In 1714, the Ministry of War reported to the Kangxi emperor that the Assistant Commander-in-Chief of Mongolia, Heyatu (赫迓圖) executed a drama performer by flogging. The Ministry suggested that the throne sentence Heyatu to suspended execution. The emperor eventually pardoned Heyatu,

²⁵⁸ Zhao Erxun 趙爾巽 et al., Yang Jialuo 楊家駱 ed., *Qing shigao* 清史稿 (The Draft History of the Qing Dynasty) (Taipei: Dingwen, 1981), juan 260, *liezhuan* 47, 9857.

probably because he was impressed by his brave performance in battles.²⁵⁹ Four years later, when a White Lotus sect was detected and the leading offenders were executed by flogging, the emperor commanded local officials to continue the severe suppression without any criticism of the practice of informal punishment. During the first half of the High Qing period, the imperial centre did not deem it urgent to deal with execution by flogging. It was legitimate to report and condemn this informal punishment, but it was also implicitly recognized that such abuse did not deserve further prohibition, particularly in the suppression of unorthodox activities.

The Yongzheng reign witnessed an initial attempt to institutionalize execution by flogging. The ambitious emperor intended to legalize the practice of this punishment, although in the early years of his reign he had to restrict the power of regional authorities and prevent overuse of expedient punishment. In 1724, Yongzheng condemned the newly appointed Zhejiang Governor, Huang Shulin (黃叔琳), for his excessive use of flogging. According to the reports, Huang beat a man to death, probably because he had previously engaged in a dispute with Huang's relatives. Huang even intended to adjudicate local litigations in Wenzhou and Huzhou where some officials worried that the short-tempered governor might kill more people during the investigation.²⁶⁰ This increased Yongzheng's worries since rumours had indicated that people in the capital of Zhejiang, Hangzhou, might trigger a protest against the authorities.²⁶¹ The throne certainly did not want to see

²⁵⁹ *Qing shilu, Shengzu shilu*, 260: 564b, September 23, KX53 (1714; KX=Kangxi reign); *Qing shilu, Shengzu shilu*, 269: 643b–644a, September 28, KX55 (1716).

²⁶⁰ Guoli gugong bowuyuan 國立故宮博物院, *Gongzhong dang yongzheng chao zouzhe* 宮中檔雍正朝奏摺 (Secret Palace Memorials of the Yongzheng Reign) (Taipei: Guoli gugong bowuyuan, 1977), di 3 ji, September 15, YZ2 (1724), 191.

²⁶¹ *Ibid.*

the situation go out of control. The emperor condemned Huang for his misconduct in various recent incidents. As to the practice of execution by flogging, he argued that “although such an offence was a matter of little significance, this person [Huang Shulin], while just being appointed as a governor, had started to be so presumptuous. Once he becomes further unruly after serving in this position for a while, what would he dare not to do?” (*shi sui xiexiao, ran chu meng weiren, ji ruci sizhi, jianglai fangzong, he shi bu ke wei* 事雖屬小，然初蒙委任，即如此肆志，將來放縱，何事不可為). Huang was then removed from office, because the emperor intended to use his case to warn other governors that overuse of power was not allowed under his reign.²⁶²

Huang might actually have been a victim of Yongzheng’s gradually stricter campaign against the power of regional officials. Only one year before this incident, the Jiaying Prefect Yan Yaoxi (閩堯熙) executed a local bully by flogging and the villagers soon expressed their appreciation of the quick execution.²⁶³ Throughout his reign, Yongzheng constantly battled officials from different levels. However, he asserted that the use of execution by flogging was not only allowed but also necessary. In the latter half of his reign, one can see that the tireless emperor gradually enhanced the legitimacy of execution by flogging.

In 1726, the government of Anxi County in Fujian urged its residents to pay unpaid taxes. Some local people then initiated a market strike. Unsurprisingly, these people were labelled as “villainous scoundrels” (*jiangun* 奸棍) and became the target of government’s suppression. The General Governor of Fujian and Zhejiang, Gao Qizhuo

²⁶² *Qing shilu, Shizong shilu*, 23: 365a–365b, August 12, YZ2 (1724); *Qing shilu, Shizong shilu*, 23: 368a, August 18, YZ2 (1724).

²⁶³ Zhao, *Qing shigao*, juan 477, *liezhuan* 264, 13007–13008.

(高其倬), commanded his subordinates to arrest the ringleaders quickly and execute them by flogging. He then reported to the throne about the punishment. The emperor quickly replied, “[in such situations,] you should make such arrangement; your dealing is very appropriate” (*ying ru shi, shen shi* 應如是，甚是).²⁶⁴ The following year, Gao Qizhuo detected a group of robbers led by a jiansheng-degree holder, Wu Han (吳漢), that attempted to rob local wealthy families but eventually failed. Gao criticized that in Fujian “people’s habitual temperament was foolish, violent, and hazardous; they frequently gathered a crowd and plotted robberies” (*Min sheng minxi yuhan er xian, dongzhe mouxing juzhong qiangjie* 閩省民習愚悍而險，動輒謀行聚眾搶劫). He further argued,

If we use the routine memorial report and follow regular reviewing procedures for this case, it will take at least half a year to complete the adjudication even if the review proceeds at the fastest pace. This procedure takes too much time. It will cool down popular sentiment about the case. As a result, it would be better to dispose of the case right at the time when it happened and just when the people heard about it. We should at the time severely punish the offenders and make the people pay attention to it. This would be sufficient to deter anyone from committing the same crime. 此事若照常審理題結，即行速結，亦在半年之後。為

²⁶⁴ *Gongzhong dang yongzheng chao zouzhe*, di 6 ji, October 13, YZ4 (1726), 739.

時既久，人情漸冷。不如當時發落，正當眾人乍聞此事，聳觀聳聽之際，加以嚴懲，足以警眾示戒。²⁶⁵

The method Gao adopted was to execute Wu Han and other leading offenders by flogging. The execution was carried out at the place where the incident happened. He believed that having the punishment viewed by local people was better than transferring it to some other place where higher-ranked officials were present. However, Gao also admitted that this arrangement violated the regular review of capital cases. Wu Han was a degree holder. It was not allowed to execute him without depriving him of his imperial degree beforehand. Gao argued that it was all because he really wanted to eradicate “local bad habits” (*difang erxi* 地方惡習). In response, Yongzheng expressed his appreciation of Gao’s arrangement. He stated that the use of execution by flogging

grew out of a situation where officials had no other choices. When facing such a situation, you should weigh the importance of different factors and select the most appropriate approach. Although the arrangement was not consistent with the established statutes, it was consistent with reason. 出不得已也。當權輕重合宜而為之。雖與例不合，與理相符。²⁶⁶

Yongzheng’s argument articulated the need for execution by flogging. The practice of informal punishment apparently violated the law, but, to the emperor, it was

²⁶⁵ *Gongzhong dang yongzheng chao zouzhe*, di 7 ji, February 10, YZ5 (1727), 440.

²⁶⁶ *Ibid.*

an appropriate approach in terms of reason and the situation. In the following years, similar cases occurred and Yongzheng frequently approved execution by flogging. Most of the victims of this punishment were labelled as “wicked people” particularly when they protested against the government during famine or natural disasters. As previously stated, these “wicked people” were not necessarily “rootless.” Some of them were imperial degree holders who had been active in elite circles and engaged in various public affairs. In 1727, a market strike appeared in Hubei because a devastating flood had caused a rise in the price of rice. Hubei Governor Fu Min (傅敏) arrested the leading protester, Shi Guangcai (石光才), who was a *jiansheng*-degree holder with close collaboration with the head of the *li* (village district), Chen Youxian (陳由先). Unlike Gao Qizhuo’s aggressive approach, Fu Min did not execute the offenders. Instead, he submitted a personal memorial (*zou* 奏) to the emperor claiming that if such “cunning and vicious vagabonds” (*diao’e guntu* 刁惡棍徒) were not severely punished the local government would not be able to control crimes in the future. The Yongzheng emperor quickly made his response after receiving Fu’s report. He argued,

Such a tendency is absolutely not to be encouraged. You should severely punish the offenders and show it to the masses. Facing such a serious crime, why do you bother to make a routine memorial (*juti* 具題) and shock the public? You can just immediately execute the offenders by

flogging. 此風斷不可長，當嚴加處分以示眾。此等事何必具題、駭人聽聞？立刻杖斃可也。²⁶⁷

Since routine memorials took too much time and review process, the emperor preferred personal memorials, particularly in communications over urgent cases. The practice of execution by flogging was not yet institutionalized. As a result, any decision and response regarding this penalty had to be very cautious. In 1731, the Guangdong Governor, Emida (鄂彌達), reported to the throne that two “local strongmen and scoundrels” (*tuhao egun* 土豪惡棍), Ye Lianfang (葉聯芳) and Huang Gaofei (黃高飛), were arrested due to their long-time involvement in crimes and connection with bandits. Worrying that the procedure of “transferring the case for adjudication through multiple hands” (*zhanzhuo shenjie* 輾轉審解) might give the offenders a chance to escape and make it difficult for the victims to redress the grievance, Emida bought these two convicts to the market and executed them by flogging in front of the masses. The emperor replied,

It is alright to deal with this case in this manner. However, as to your statement that once the case is investigated the offenders should be brought to the market and beaten to death in front of the masses, you should be careful about it. The judicial officials may not be all just and impartial persons. If there is any injustice and error, public opinion may seriously condemn the miscarriage of justice. 好。但一經審明、即提至

²⁶⁷ *Gongzhong dang yongzheng chao zouzhe*, di 8 ji, July 9, YZ5 (1727), 491.

市曹杖斃示眾之論，當詳慎為之。恐有司未必皆公明之人員，倘有冤抑錯誤，所聞非矣。²⁶⁸

Apparently, Yongzheng was more concerned about the persons who handled the cases than the problems of protracted procedure. To him, a capable official stood in a critical role in the practice of quick justice. The inefficiency of judicial review and the risk of a criminal's desertion had not been seriously considered until the Qianlong era. Just like the fierce political struggles he encountered, unruly and unrestricted officials would make any proper arrangement inappropriate. However, in the last few years of his reign, Yongzheng was also forced to discuss the legislation of general rules. In 1733, two years before his sudden death, Yongzheng received a report from Emida claiming that the uncivilized Yao people did not fear beheading but were afraid of being executed by flogging. Emida suggested that the throne enact a law that permitted officials to execute Yao people by flogging, even though he also admitted that flogging with bamboo strokes was merely a light penalty in the system of standard punishment. Yongzheng's response was as follows:

I have read the memorial. [As to your suggestion,] you can weigh the situations and apply the measures where appropriate. Both flogging-to-death and beheading are death penalties. As long as the punishment is not used to arbitrarily kill and silence the innocent, it is not inappropriate to

²⁶⁸ Guoli gugong bowuyuan 故宮博物院, Gongzhong dang zouzhe: Yongzheng chao 宮中檔奏摺: 雍正朝, no. 402010060, February 10, YZ9 (1731).

use this penalty. As for those cases that need to go through the routine memorial procedure, you should follow the established statutes and use routine memorials. 覽。卿等酌量合宜辦理。杖斃與斬決同正法也。為無殺以滅口情事，未為不可。應具題者，照例題奏。²⁶⁹

Although his direction only roughly defined the circumstances where the punishment could be used, Yongzheng had laid the foundation for execution by flogging for the Qianlong emperor and later emperors. In the subsequent Qianlong reign, flogging to death became a core element of the punishment of “wicked people.” To the Qianlong emperor, flogging to death was one of the methods that allowed him to reach the ideal of judicial expediency.

In the following section, I will analyze the evolution of the “Substatutes on Wicked People” (*diaomin lin* 刁民例) and their extended impacts upon other similar crimes. We will focus on the communication process between the Qianlong emperor and governors, particularly through the use of “king’s order” and established communication systems.

From “Rootless Rascals” to “Wicked People”

Throughout the Qianlong emperor’s sixty-year reign, China underwent dramatic social and economic changes. The prosperity and development brought a series of new problems, including popular protest, ethnic conflicts, rising land prices, borderland

²⁶⁹ *Gongzhong dang yongzheng chao zouzhe*, di 21 ji, July 1, YZ11 (1733), 777.

revolts, and corruption among officials. The Qianlong emperor was compelled to take steps from the beginning of his reign. Fortunately, his predecessors left efficient imperial control institutions to him. The Qianlong emperor's task was to make use of the existing resources to battle these crises. His responses to the crises, together with his ambitious plans to initiate changes in the institutions, had tremendous impacts on not only political and social institutions but also the operation of the criminal justice system and Chinese legal culture in a larger sense.

Like his father and grandfather, the Qianlong emperor had great concern about the stability of his rule over the majority of Han Chinese people. In addition to those related to political or literary activities, a number of challenges came from new social issues. The eighteenth-century commercialization and population pressure generated a flood of vagrants, “shed people” (*pengmin* 棚民), and “rootless rascals.”²⁷⁰ In the eyes of the authorities, the epidemic of marginalized people not only disturbed social order but also gave rise to the *hui* societies (會) and various sectarian and mutual aid organizations.²⁷¹ The Kangxi and Yongzheng emperors had previously set up rules and policies against rootless wanderers. The Qianlong emperor took a further ambitious step in the anti-rascal campaign, utilizing both regular and exceptional procedures to sweep these potential

²⁷⁰ For studies on shed people, see Stephen C. Averill, “The Shed People and the Opening of the Yangtze Highlands,” *Modern China* 9, no. 1 (1983): 84–126; Anne Osborne, “Barren Mountains, Raging Rivers: The Ecological and Social Effects of Changing Landuse on the Lower Yangzi Periphery in Late Imperial China” (Ph.D. diss., Columbia University, 1989), 66–70; Sow-Theng Leong, *Migration and Ethnicity in Chinese History: Hakkas, Pengmin, and Their Neighbors* (Stanford: Stanford University Press, 1997).

²⁷¹ For more details on secret societies in Chinese history, see David Ownby and Mary S. Heidhues, eds., “*Secret Societies*” *Reconsidered: Perspectives on the Social History of Modern South China and Southeast Asia* (London: Routledge, 1994); David Ownby, *Brotherhoods and Secret Societies in Early and Mid-Qing China: The Formation of a Tradition* (Stanford: Stanford University Press, 1996).

threats. Roughly from 1739, he started to use the ambiguous notion of “wicked people”—a term that had been used by Chinese officials to refer to those they deemed immoral, crafty, and disobedient—and initiated a series of policies against these subjects. While the meaning of the term remained obscure, “wicked people” were punished in a more serious and much quicker procedure than “rootless rascals,” namely, the procedure of “submitting a memorial to the throne and carrying out execution at the same time” (*yimian juti yimian zhengfa* 一面具題, 一面正法). Anyone who was viewed as perilous to the authorities and public security might be subject to the punishment for “wicked people” or similar penalties. The imperial court started to define the term in the 1740s, but in practice this term remained broad and could easily apply to any group that had offended the authorities.

To better understand the Qianlong emperor’s reform of summary execution, it is necessary to briefly trace its roots to the “Substatutes on Rootless Rascals” (*guanggun li* 光棍例) in Ming law. The major target of these substatutes was vagrants and hooligans who wandered around and gathered with local bullies to rob or harass ordinary people. The term “rootless rascals” combined two negative terms *guang* (光) and *gun* (棍). The former term primarily meant “bare,” “naked,” and “rootless.” Many texts on rootless rascals described them as “having no roots, household, property, or primary residence place” (*wuji* 無籍).²⁷² The latter term *gun* literally meant “sticks,” referring to those considered evil, violent, cunning, or involved in illegal activities. The combination of two

²⁷² Chen, *Ming jingshi wenbian*, *juan* 102, 909a–911b, 919b–920a; Chen, *Ming jingshi wenbian*, *juan* 140, 1391a–1393b; Chen, *Ming jingshi wenbian*, *juan* 244, 2251b–2252b; Huang Zhangjian 黃彰健, ed., *Mingdai lili huibian* 明代律例彙編 (A Complete Compilation of the Laws and Substatutes of the Ming Dynasty) (Taipei: Zhongyang yanjiuyuan lishi yuyan yanjiusuo, 1979), 228, 296–97.

words reflected how authorities and literati perceived rootless or unlawful persons. The continued urbanization and commercialization during the Ming gave rise to these bullies, forcing the authorities to enact statutes and impose strict punishments. Many of these rascals not only got involved in fraud, robbery, swindling, and local conflicts but also had connections with local organizations and even enrolled in the government's military system.²⁷³ In order to dismiss these potential threats, the Ming rulers repeatedly extended the punishment to those who made profits by filing false accusations, monopolized local taxation or swindled tax-payers, and engaged in litigation or stirred up disputations among parties.²⁷⁴ Although the Ming rulers had paid close attention to the growing number of these rascals, the most serious penalty inflicted on this group was merely military servitude.²⁷⁵ This punishment was already more severe than that for the relatively loosely defined crime of “wicked people.”

Contrary to the notion of “rootless rascals,” which included both violent and non-violent behaviour, the meaning of “wicked people” was primarily restricted to images of them as crafty and cunning, with a particular association being made with what were usually called “litigation pettifoggers” (*songgun* 訟棍). According to the *Great Ming Code*, “wicked people” were those who “particularly took advantage of an official's weakness to enforce something, injured the interests of good and honest people, stirred up litigations, ganged together for false accusation, and kept local officials under their

²⁷³ David M. Robinson, *Bandits, Eunuchs, and the Son of Heaven: Rebellion and the Economy of Violence in Mid-Ming China* (Honolulu: University of Hawaii Press, 2001).

²⁷⁴ Huang, *Mingdai lili huibian*, 557.

²⁷⁵ Zhang Guanghui 張光輝, “Ming-Qing xinglü zhong de ‘guanggun zui’” 明清刑律中的“光棍罪” (The Punishment of “Hoodlum” in Ming-Qing Criminal Laws), *Asian Studies* 아시아연구 5 (2008): 147–160.

control and obstructed local governance” (*zhuanyi xiezhi guanli, xianhai Liangshan, qimie cisong, jiedang nieci changao, bachi guanfu bude xingshi* 專一挾制官吏, 陷害良善, 起滅詞訟, 結黨捏詞纏告, 把持官府不得行事).²⁷⁶ Although the Ming state had imposed punishments for the offences of assisting litigation or disturbing local government and society, it did not find it necessary to develop additional categories given the establishment of the punishment for rootless rascals. On the other hand, as I will explain in the following analysis, the statute of “Pushing Honourable Persons too Far and Causing Them to Revolt” (*ji bian liang min* 激變良民), which targeted the repressive officials rather than the unruly masses, had ironically turned out to be the basis for the Qing ruler to punish wicked people, as the Qianlong emperor intentionally urged local officials to exert full strength in the suppression of popular demonstrations.

In the Qing dynasty, the no-death-penalty policy toward the conveniently defined rootless rascals was dramatically changed. The Qing ruler deemed it necessary to use extreme punishment to suppress the increasing protests that had frequently involved riots. The Qing court found the Ming legislation of “rootless rascals” particularly useful, and decided to extend the meaning of this legal concept in order to deal with social revolts. In 1671, the Kangxi emperor echoed the suggestions of high officials, exhorting governors and local officials to capture and imprison “scoundrelly wicked people” (*wulai diaomin* 無賴刁民) following the Substatute on the Ringleaders of Rootless Rascals (*guanggun weishou li* 光棍為首例). The official’s report emphasized the image of these rascals as crafty and cunning, depicting that they “usually swindled, threatened, and absconded

²⁷⁶ *Da Ming lü jijie fuli* 大明律集解附例 (The Collected Commentaries of the Great Ming Code with Regulations) (Taipei: Xuesheng, 1970 reprint), *juan* 22.

after defaming others” (*duo hezha gaojie ji gao hou qiantao* 多嚇詐告訐及告後潛逃).²⁷⁷

The later legislations during the Yongzheng and Qianlong reigns further extended the scope of this punishment. Anyone could be called a “rootless rascal” or could receive the punishment for these rascals if they were swindling, assisting accusation, conspiring with government staff, stealing or invading other’s properties, or participating in sectarian groups. Emperors frequently exhorted officials to include as many wicked people as possible and enhanced the punishment for ringleaders to *lijue*.²⁷⁸ As a result, the actual function of this term was not to identify who was “rootless” or single but to allow authorities to easily analogize this crime to any potential threat that need to be punished.

However, when a large flood of cases came to the government following the expansion of rascal punishment, emperors and officials quickly discovered that the slow procedure of reviewing capital cases—even though the cases of *lijue* were already on the quickest mode in the regular system—weakened the deterrent force of the death penalty. As a result, the ambitious Qianlong emperor sought a more efficient way of getting rid of outlaws. This was not only for controlling society. Instead, the Qianlong emperor had a strong ambition to urge officials to manage local affairs in his preferred way. Most of the summary executions during the Qianlong reign were discussed through memorials and approved by the emperor, at times with specific instructions. The direct communication allowed the Qianlong emperor to avoid the regular procedure and further established substatutes for some frequently appearing cases. The emperors after Qianlong reign, particularly the Jiaqing emperor and the Daoguang emperor, inherited the laws and routinized the procedures. All these reforms were associated with the initial campaigns

²⁷⁷ *Qing shilu, Shengzu shilu*, 35: 472b, February 1, KX10 (1671).

²⁷⁸ Zhang, “Ming-Qing xinglü zhong de ‘guanggun zui’,” 155–60.

against “rootless rascals,” while Jiaqing and his successors also developed a contradictory approach that relied on “braves” (*yong* 勇)—usually as rootless and violent as were those “rootless rascals”—to fight against rebellion and social revolt.

To crack down on all these rising threats, the Qianlong emperor had to first identify some specific offences that deserved more severe punishments than “rootless rascals.” In the fourth year of his reign (1739), in the midst of the famine following a drought, the Qianlong emperor particularly targeted what he called “wicked people,” “villainous scoundrels” (*jiangun* 奸棍), and “crafty vagabonds” (*diaohua zhi tu* 刁猾之徒). All these terms had much more ambiguous meanings than “rootless rascals” but referred to specific behaviour that was considered more serious:

There was a kind of subject called “wicked people.” They were neither peasants nor merchants. They usually loafed around and only sat and ate. If there was flooding or drought, they would collect money from people and claimed to help them report their losses to the government. Villagers usually followed their instructions in the hope that they could receive subsidy and waive their taxes. As a result, all these foolish people’s money went into the villain’s personal pockets. When the Prefect and County Magistrate began to investigate the disaster, these scoundrel people would conspire with government clerks and village constables in order to make profits by falsified household registries. Thus the state’s revenue filled these wicked people’s insatiable pockets again. Once the officials discovered that the losses were untrue or ineligible for the famine subsidy,

these villains would once again—while being unable to achieve what they desired— distribute leaflets and put up posters, gather the masses and obstruct the streets, and then disturb and shout out in front of the government buildings. They would even insult the officials without caring about the law and order. Some cowardly officials even succumbed to the wicked people and let them manipulate local governance and defy the official's authority. Since the wicked people could continue to abuse the powers they obtained, the poor's privileges were then largely neglected. This not only had no benefit to the state but also greatly harmed the ordinary people. Now that I speak of this, I am really virulent about it. 更有一種刁民，非農非商，游手坐食。境內小有水旱，輒倡先號召。指稱報災費用，挨戶斂錢。鄉愚希圖領賑蠲賦，聽其指揮。是愚民之脂膏，已飽奸民之囊橐矣。迨州縣踏勘成災，若輩又復串通鄉保胥役，捏造詭名、多開戶口。是國家之倉儲，又飽刁民之慾壑矣。迨勘不成災，或成災而分別應賑不應賑，若輩不能遂其所欲，則又布貼傳單、糾合鄉眾、擁塞街市、喧嚷公堂。甚且凌辱官長，目無法紀。以致懦弱之有司，隱忍曲從；而長吏之權，竟操於刁民之手。刁民既得濫邀，則貧民轉至遺漏。是不但無益於國，並大有害於民。言念及此，殊可痛恨。²⁷⁹

²⁷⁹ *Qing shilu, Gaozong shilu*, 99: 504b, August 29, QL4 (1739).

While the Qianlong emperor still had not come across any specific policy against these villains, he had started to exhort officials to pay close attention to it. He was particularly worried that “wicked people” might take advantage of conflagration or disaster to loot the towns or stir up disputes. The rising protest against the authorities was one of the reasons that he had been increasingly concerned about this issue.

Recent studies have demonstrated that an increasing number of “state engaging protests” emerged during the early decades of Qianlong reign. These “protests” had considerably more diverse causes than the earlier periods had ever encountered, and there was always manipulation of interests behind the actions.²⁸⁰ The emperor had explicitly condemned those who “picked a quarrel on some flimsy pretext” (*jie duan sheng shi* 借端生事).²⁸¹ For example, in 1739, a Henan county Magistrate punished a villager who failed to fulfill his duty to report incidents. Another villager, Zhang Weidong (張為棟), spread a rumour that the convict had been beaten to death by the Magistrate and mobilized villagers to close the entrance of the county when the Magistrate headed to the provincial capital. After the Magistrate returned and opened the entrance, Zhang quickly fled and no one found him. The Qianlong emperor was enraged when he heard about this, asking regional authorities to severely punish such a wicked subject.²⁸² Although it remains unknown if Zhang was captured by the government, it is certain that cases with similar plots, including ordinary people provoking local rivalries or challenging local authorities, had become a real epidemic during the Qianlong reign and were associated with what Ho-fung Hung calls “protest with Chinese characteristics.” As Hung points out,

²⁸⁰ Hung, *Protest with Chinese Characteristics*.

²⁸¹ *Qing shilu, Gaozong shilu*, 135: 949b–950a, January 27, QL6 (1741).

²⁸² *Qing shilu, Gaozong shilu*, 101: 530a, September 29, QL4 (1739).

market expansion and the associated population growth were certainly important causes of the rise of popular protest, but the continued state-making process and the imperial responses to social changes were also critical to the trend of riots and demonstrations. Several common forms of demonstration, including market strike (*bashi* 罷市), food-looting (*qiangliang* 搶糧), crowd disturbance and uproar (*juzhong xuanhua* 聚眾喧嘩), and even crowd disturbance with weaponry (*chixie juzhong* 持械聚眾) had been linked with the growing problem of “wicked people,” and authorities were commanded to punish immediately.²⁸³ For example, in 1741, a draught attacked Guangdong and many people complained about the lack of rice. When Taiwan officials visited Chaozhou and borrowed rice from Guangdong officials, many Chaozhou people protested against the government and shut down the market. Local officials reported this incident to the court. The Qianlong emperor responded that such a riot was not only due to “wicked people” but also because of the failure of local officials to deter and suppress unruly subjects.²⁸⁴ Here, the Qianlong emperor gradually turned to severe suppression and punishment as a formal response to the rising social crisis. His subsequent reform of the punishment of “wicked people” left an institutional legacy to the Jiaqing and later emperors, who created different approaches to the widespread rascals while institutionalizing the procedure of summary execution.

After repeatedly stating his concerns over the growing disturbance among local communities, the Qianlong emperor found that to fight against “wicked people” it would

²⁸³ See, for instance, *Qing shilu, Gaozong shilu*, 145: 1089b–1090a, June 29, QL6 (1741); *Qing shilu, Gaozong shilu*, 149: 1144b, August 27, QL6 (1741); *Qing shilu, Gaozong shilu*, 155: 1218a–1218b, November 30, QL6 (1741); *Qing shilu, Gaozong shilu*, 167: 123a, May 28, QL7 (1742); *Qing shilu, Gaozong shilu*, 171: 167b–168a, July 16, QL7 (1742).

²⁸⁴ *Qing shilu, Gaozong shilu*, 145: 1092a–1092b, June 29, QL6 (1741).

be necessary to control bureaucrats from the outset. In 1743, the Qianlong emperor announced to all civilian and military officials that they had to restrain wicked subjects.²⁸⁵ Only two months later, he condemned the then Jiangxi Governor Chen Hongmou (陳宏謀) for not properly handling increasing rice-looting incidents following a flood. The disaster made food price rise sharply, and a series of food-robberies took place across the province. The Qianlong emperor was particularly enraged because Chen did not keep him updated about the situation. He argued that Chen's improper dealing and delay worsened the already serious problem of wicked people.²⁸⁶ To monitor the officials, the Qianlong emperor usually communicated with bureaucrats through imperial memorials. In many cases, the Qianlong emperor also forwarded his instructions to other relevant officials so that his commands on the punishment of local villains could be circulated among officials. In this regard, the Grand Council was of great help to the emperor—it sent memorials and the emperor's comments in a prompt and confidential manner, and it also preserved a duplicated copy of the original document. This certainly enabled officials to communicate with the monarch directly, but it also brought a great challenge to the officials because they would receive a high volume of commands and condemnations from the emperor.

When abundant regional reports flooded to the court through imperial memorials, the Qianlong emperor gradually realized that merely exhorting officials might not work because the existing procedures and regulations had constituted an obstacle to quick execution. The emperor certainly had to use the rhetoric to condemn officials. But he also had to provide his reasoning to justify the use of an expedient procedure. In 1740, the

²⁸⁵ *Qing shilu, Gaozong shilu*, 191: 457b–458b, (intercalary) April 29, QL8 (1743).

²⁸⁶ *Qing shilu, Gaozong shilu*, 195: 501a–502a, June 18, QL8 (1743).

Qianlong emperor complained about the excessive use of deferred execution (*huanjue* 緩決), arguing that officials' reluctance to categorize cases as verified (*qingshi* 情實) had worsened the already serious judicial backlog. Many cases of deferred execution, as he observed, were converted to “cases with the probability of receiving mercy” (*kejin* 可矜) and the convict's life would be spared. He questioned why the officials forgave such shameless louts (*bailei* 敗類). He further argued that even the Yongzheng emperor, who rarely exercised quick execution, would like to kill such offenders immediately.²⁸⁷ Several months later, the Qianlong emperor urged the Ministry of Personnel to send convicts who illegally sold official degrees to the Board of Punishment for immediate execution (*jixing zhengfa* 即行正法).²⁸⁸ The execution, in this case, avoided the required “repeated memorials” (*fuzou* 覆奏) procedure as the gradually established institution of immediate execution was viewed as a more severe punishment than *lijue*.²⁸⁹ Before he initiated his first summary execution regulation in 1747, which allowed regional authorities to conduct executions without going through the regular review procedure, the Qianlong emperor had attempted to quicken the procedure within the regular review and Autumn Assizes system.

In addition to the statutory restrictions, the Qianlong emperor also feared that summary execution could result in regional authorities having excessive power. In 1746, the Chuzhou's (處州) Regional Commander Miao Guocong (苗國琮) submitted a

²⁸⁷ *Qing shilu, Gaozong shilu*, 129: 886a–887a, October 26, QL5 (1740).

²⁸⁸ *Qing shilu, Gaozong shilu*, 138: 988b–989a, March 8, QL6 (1741).

²⁸⁹ Yongzheng emperor was one of the earliest rulers who explicitly stated that immediate execution (*jixing zhengfa*) was a specific category of death penalty that should be considered more severe than imminent execution (*lijue*). See *Qing shilu, Shizong shilu*, 79: 31a–31b, March 2, YZ7 (1729).

memorial arguing that local officials had limited power and resources to capture and suppress the wicked people. He urged the court to permit officials to summarily execute all scoundrels (*shasi wulun* 殺死勿論) if they disturbed local communities and refused to obey official rules. The memorial was forwarded to the Board of Punishment, which then responded that such a suggestion might cause abuse of power and it would be difficult to determine whether local officials had executed the actual offenders.²⁹⁰ The Qianlong emperor concurred with the Board's idea, but he commanded the officials to draft a substature—under the Statute of “Pushing Honourable Persons too Far and Causing Them to Revolt”—to authorize the use of troops in the arrest of wicked people who gathered and resisted against officials. The new law changed the goal from protecting good people to suppressing bad elements. The original draft even allowed officials to summarily execute all suspects who refused arrest because, as the late Qing judicial official Xue Yunsheng (薛允升) argued, all suspects refusing arrest should be summarily executed and these people were no different from rebels (*luanmin* 亂民).²⁹¹ This excessive power was eventually removed before the substature's final enactment. The Qianlong emperor had apparently considered legalizing the power of summary execution without prior approval. He was still inclined to resort to regular procedures at this point, but he was almost ready to initiate an innovative approach that went beyond the existing institutional barriers.

In 1747, the Qianlong emperor took a radically different approach to deal with wicked people and rootless rascals. He asked regional authorities to continue the use of

²⁹⁰ *Qing shilu, Gaozong shilu*, 277: 619b–620a, October 22, QL11 (1746).

²⁹¹ Xue Huang, ed., *Duli cunyi chongkanben*, *juan* 21, *binglü* 2, *junzheng* 12, *jibian liangmin* 04–06.

routine memorials (*tiben* 題本) in reporting felony crimes (*zhong'an* 重案), while also requiring them to execute offenders for specific behaviour before the final adjudication at the central level. This method creatively combined the existing procedure with the reforming scheme. In January, the Sichuan and Shaanxi Governor reported a Yuanzhou (原州) robbery case conducted by military soldiers and local commoners. The Qianlong emperor commanded the Governor to execute the ringleaders quickly while submitting routine memorials at the same time.²⁹² Five months later, several Henan natives refused to hire workers and pay labourers as required by the government in a water dam construction project. In order to protest against the local government, they blocked the county Magistrate from entering the city. They also filed a petition to an imperial envoy who went by the city. Both the Governor and the emperor viewed this act as gathering a crowd and resisting against officials (*juzhong kangguan* 聚眾抗官). The Governor quickly arrested the protesters and reported the incident to the throne. The Qianlong emperor commanded the Governor to “immediately execute the ringleaders on the spot” (*ji yu benchu zhengfa* 即於本處正法) and also submit a routine memorial.²⁹³ In these cases, regional officials did not execute convicts before receiving approval from the court. Instead, they reported to the emperor beforehand and received the throne’s approval before execution. The only procedure they had avoided was the central judicial review of the ringleaders. The Qianlong emperor still had complete control over the practice of the

²⁹² *Qing shilu, Gaozong shilu*, 282: 683b–684a, January 13, QL12 (1747).

²⁹³ National Palace Museum (Guoli gugong bowuyuan 國立故宮博物院; Taipei), *Junjichu dang zhejian* 軍機處檔摺件, No. 000880, 000930, 000987; *Qing shilu, Gaozong shilu*, 293: 841a–842a, June 26, QL12 (1747).

death penalty. In May 1748, the emperor announced a substature on the punishment for wicked people:

If wicked people from any province cause trouble and obstruct government buildings, and act violently and beat officials, gather a crowd of forty to fifty people, the ringleaders should be sentenced to beheading without delay according to the statutes. After execution, the cut-off heads should be exposed to public following the Substatute on Robbers Who Commit Manslaughter. Although those who conspire and gather with each other and beat the officials are accomplices, their actions are no different from the ringleaders and hence they should be sentenced to beheading without delay according to the substature on rootless rascals. All the other accomplices should be sentenced to strangulation with delay awaiting the final review and execution. Those who were forced to join the criminal act should be sentenced to 100 strokes of the heavy bamboo according to the substatures. When facing this kind of case, governors should first report the situation to the emperor. Then they should command their subordinates to capture the main culprits and quickly make judgments for each convict. Once the convicts are confirmed as head culprits or rebel chiefs, governors should submit the routine memorials and execute the ringleaders on the spot and expose their heads in public. 凡直省刁民，因事鬪堂塞署，逞兇毆官，聚眾至四五十人者，為首依律斬決，仍照強盜殺人例梟示。其同謀聚眾，轉相糾約，下手毆官者，雖屬為從，其

同惡相濟，審與首犯無異，亦應照光棍例擬斬立決。其餘從犯照例擬絞監候。被脅同行者，照例各杖一百。如遇此等案件，該督撫先將實在情形奏聞，嚴飭所屬立拏正犯，速訊明確，分別究擬。如實係首惡通案渠魁，該督撫一面具題，一面將首犯於該地方即行斬梟。²⁹⁴

As the Qianlong emperor had repeatedly expressed in previous announcements, “wicked people” constituted a serious threat to the authorities and the execution of the ringleaders should be as quick as possible. The Qianlong emperor’s new policy avoided the protracted review procedure and made the routine memorial merely a backup record rather than a case report for central adjudication. As he explained,

Our current criminal justice creates a long process of judicial review and usually defers execution of offenders. Such a long process reduced the deterrent effect of punishment. Even if we publicly execute the chief criminals at the market, after a protracted process the punishment of serious crimes is no different from that of lighter crimes.

Moreover, those followers of the crime who do not receive extreme punishment as do their chiefs would return to their normal peasant’s life.

Thinking they have made it this time, they show absolutely no sense of fear, nor any intention to caution each other against unlawful conduct.

Thus, how do we warn these obstinate people and eradicate their wicked tendencies? 向來審解成招，監禁候旨，往返經時。即將首犯棄市，不

²⁹⁴ *Qing shilu, Gaozong shilu*, 314: 152a–153b. May 6, QL13 (1748).

過與尋常案件等。其當場夥眾，久散歸農，轉以逞快一時為得計，全無動色相戒之意，何以警頑梗而杜刁風？²⁹⁵

Apparently, the Qianlong emperor's desire to eliminate "wicked tendencies" had made the judicial review system obsolete. He deprived the Board of Punishment and other central judicial officers of privileges of adjudication. He also forced governors to use the new procedure—although a number of governors were unsure how to conduct the expedient execution and how to determine what crimes should follow the new rule. In the following decades, the Qianlong emperor made a great effort to instruct officials how to conduct quick executions. As the next section reveals, the Qianlong emperor frequently condemned officials for "sticking to the original procedures." While some officials boldly fought back and challenged the Qianlong emperor's expedient policy, the Qianlong emperor actively defended his approach and reinforced the legitimacy of quick execution. Throughout the process of communication, the sped-up punishment for the "wicked people" was extended to a wide range of crimes, including those offences that did not directly challenge the authority of government. When officials deliberately used "respectful request for king's order in order to carry out immediate execution" (*gongqing xianxing zhengfa* 恭請王命先行正法)—a humble way to probe the idea of the throne without harming their own career and lives—the throne also gradually established precedents and eventually legislated new statutes for quick execution.

²⁹⁵ *Ibid.*

Defending Judicial Expediency

From 1747 to 1748, the Qianlong emperor received numerous reports about people gathering crowds and resisting against officials. In May 1748, only a few days after the announcement of the Substatute on Wicked People, the Qianlong emperor was reviewing a Jiangsu case regarding a demonstration and food riot. The case happened on April 24 when the rice in the province became extremely expensive and the ban on exploring rice could not stop the price increase. A Suzhou native Gu Yaonian (顧堯年) demonstrated on the street and asked the Governor to reduce the price of rice. He took off his shirt and tied himself up with ropes. He carried a yellow banner behind him and held a knife in his mouth. A large crowd of people came and viewed Gu's demonstration. This scene quickly caught the attention of Jiangsu Governor Anning (安寧). Anning ordered his subordinates to arrest Gu and sent him to Changzhou County for further investigation. When the crowd followed and heard the sound of officials slapping Gu's in the face, they were enraged and vandalized the facilities outside the government building.²⁹⁶ The Suzhou Prefect Jiang Shunjiao (姜順蛟) then arrived on the scene and spoke to the masses. He tried to dismiss the crowd, but the masses refused to leave unless the

²⁹⁶ National Palace Museum, *Junjichu dang zhejian*, No. 002332, 002435. Wu Jen-shu (巫仁恕) briefly describes this case. His excellent analysis points out the contending views between the authorities and local people and even between different levels of local officials. However, while he places this case in the large trend of the collective action of urban masses, he does not link it to the complex correlations among monarchs, bureaucrats, and local actors who were closely associated, as this chapter argues, with the broader context of mid-Qing judicial reform that had tremendous impact on subsequent development of criminal justice. For Wu's studies on this case, see Wu Jen-shu 巫仁恕, *Jibian liangmin: chuantong Zhongguo chengshi chunzhong jiti xingdong zhi fenxi* 激變良民: 傳統中國城市群眾集體行動之分析 (When Good Citizens Turned Rebels: Analyses of Urban Mass Collective Actions in Traditional China) (Beijing: Beijing daxue chubanshe, 2011), 197-199.

government released Gu.²⁹⁷ Under the pressure of their request, Jiang released Gu. They then turned to ask Jiang to set a reasonable price for rice. Jiang responded that he could not make the decision and then ran quickly to the Governor's office. The crowd went after Jiang, pushing down fences, dropping the banners and flagpoles, and roaring around the government building. The Governor soon commanded soldiers to capture the rioters, dismissing the crowd and catching around thirty-nine people. Gu and the leader of the crowd, Ye Long (葉龍), were arrested. They were brutally tortured by heavy bamboo. By April 27, three to four convicts had been killed during interrogation. The remaining suspects were then sentenced to punishments according to the statutes.²⁹⁸

When the Qianlong emperor viewed the case record, it was already May. Although the execution was not approved before it was carried out, the emperor quickly expressed his support for the punishment of Gu particularly because the officials depicted Gu as “a loafer who disregarded law and order” (*youshou zhi min, mu wu gongling* 游手之民, 目無功令).²⁹⁹ Having known that the demonstration was closely related to food markets, natural disaster, and famine, the Qianlong emperor argued that Gu disregarded the officials' efforts to balance food prices and dared to make use of this subject to disturb local order. He asserted that Gu's offence was the most serious among all rootless rascals (*guanggu zhi you* 光棍之尤),³⁰⁰ while he seemed to ignore the fact that even the officials' reports admitted that Gu had done nothing except made a peaceful demonstration. Moreover, soon after the execution of the crowd leaders and the poor

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Qing shilu, Gaozong shilu*, 315: 167a–168a, May 18, QL13 (1748).

³⁰⁰ *Qing shilu, Gaozong shilu*, 314: 161a–162a, May 14, QL13 (1748).

demonstrator, local rumours started to go around that Anning killed twenty-one people. Local people started to compile a song in posters complaining that Anning had made “the peaceful society never peaceful again” (*congci anning bu zai ning* 從此安寧不再寧; Anning’s name also means “peaceful”).³⁰¹ This certainly made the Qianlong emperor uneasy. He had explicitly expressed his dislike of rumours and satiric songs and now they had appeared following a demonstration that was almost a revolt.³⁰²

What further complicated things was the use of the death penalty by heavy bamboo (*zhangbi* 杖斃). Only a few days ahead of Gu’s case, a food riot happened in Zhujiajiao (朱家角) of Qingpu County (青浦), a county that was only forty miles away from Suzhou. Two local men, Wang Shengjin (王聖金) and Qin Bu (秦補), claimed that rice merchant Shen Shaopeng (沈紹鵬 or 沈紹彭) planned to export rice and disregarded the ongoing ban. According to the local gazetteer *Zhuli xiaozhi* (珠里小志; compiled during the Jiaqing reign), Wang’s accusation was fabricated. He asked his followers to carry a basket of excreta and stroll on the streets, calling people to shut down the market and demonstrate against the price of rice. Shen then rushed to the county government, asking the Magistrate to arrest Qin, Wang, and their followers. This action enraged the masses. They took the Magistrate and city guards to Yuantong Temple (圓通寺) and slapped the guards on the face. After the Magistrate escaped, he told the prefect and reported the incident to the Governor. The Governor decided to send a troop to suppress the masses. However, considering the maintenance of local order, the provincial government eventually sent a small group of soldiers to capture the major demonstrators

³⁰¹ National Palace Museum, *Junjichu dang zhejian*, No. 002348.

³⁰² *Qing shilu*, *Gaozong shilu*, 314: 161a–162a, May 14, QL13 (1748).

and their ringleaders. Wang and Qin were then quickly beaten to death by heavy bamboo.³⁰³ Again, Governor Anning did not receive prior approval before he executed the offenders. He might have been aware that the throne was inclined to punish demonstrators severely, but his actions were still risky to his career.

The Qianlong emperor received the report in May when the incident was suppressed and the convicts were executed. The story he learned was quite different from the local narrative. The Governor's report asserted that it was Qin Bu and Wang who led the crowd to damage rice shops, vandalize rice-shipping boats, and then stir up a market strike.³⁰⁴ No matter how the Governor expressed his perspective, the Qianlong emperor had to defend his severe policy toward demonstrators and rioters. In the wake of similar cases across the nation, the Qianlong emperor perceived harsh punishment as a necessity. He provided further explanation for the future reference of all officials:

These wicked people gathered the crowd and resisted against the officials. They were beaten to death for their misconduct, and their death is by all means not to be regretted. When these mobsters stirred up the disturbance with strong emotions, and when the crowd resisted arrest by the officers, flogging one or two mobsters to death could lessen their fierce spirit and force them to leave a little quickly. In contrast, if the offenders were arrested and sent for adjudication, they should be punished according to the statutes. If the authorities punished them with death by heavy bamboo,

³⁰³ Zhou Yubin 周郁濱, *Zhuli xiaozhi* 珠里小志 (A Little Gazetteer of Zhujiajiao Township) (Shanghai: Shanghai guji, 2000), *juan* 18, *zaji* xia.

³⁰⁴ *Qing shilu*, *Gaozong shilu*, 315: 167a–168a, May 18, QL13 (1748).

criticism would definitely rise and condemn the use of extralegal penalty, and then denounce the officials for treating human lives like straw. This would let the government lose the heart of the masses and make it difficult to eradicate the viciousness. Facing the increasing cases of gathering crowds in recent days, I specifically ask the Board of Punishment to draft a regulation, making this crime subject to the previous Substatute on Shaanxi-and-Gansu Wicked People that allows authorities to execute the convicts immediately. 刁民聚眾抗官，恣為不法立斃杖下，毫無足惜。但在起事之初，群情洶湧，或眾犯不服拘拏，強梁鬪鬪則杖斃一二人，可以挫其兇悍之氣，使早為解散。至既經拏獲究審，自應按律定擬，若加以杖斃，必有議其法外用刑、草菅人命者，轉不足服眾心而懲兇暴。朕因近日聚眾之案甚多，特命刑部定議，照陝甘刁民聚眾之例，立即正法。³⁰⁵

Execution by heavy bamboo was not a formal punishment in Qing law, but it had been practiced in some cases of robbers, murderers, ringleaders of rootless rascals, or wicked and scoundrelly persons.³⁰⁶ The Qing court had developed different approaches to this punishment. In some cases, county magistrates were punished because they beat

³⁰⁵ *Qing shilu, Gaozong shilu*, 314: 161b–162a, May 14, QL13 (1748).

³⁰⁶ For studies on execution by heavy bamboo, see Suzuki Hidemitsu 鈴木秀光, “Zhangbi kao: qingdai zhongqi sixing anjian chuli de yixiang kaocha” 杖斃考：清代中期死刑案件處理的一項考察 (Execution by Heavy Bamboo Strokes: A Study of Mid-Qing Capital Punishment Procedure), in *Shijie xuezhe lun zhongguo chuantong falü wenhua, 1644–1911* 世界學者論中國傳統法律文化 (Recent International Scholarship on Traditional Chinese Law), ed. Zhang Shiming, Thomas Buoye, and Na Heya 娜鶴雅, 209–34 (Beijing: Falü chubanshe, 2010).

convicts to death.³⁰⁷ But in most periods of the Qing dynasty, death by heavy bamboo was accepted in practice and the imperial court either tacitly agreed or openly supported the punishment. Some prisoners were beaten to death because the officials intended to prevent escape. Some were beaten in public because the magistrates believed that flogging to death had a better deterrent effect than torture to death.³⁰⁸

In his response to Anning, the Qianlong emperor had deliberately explained that death by heavy bamboo should be at the scene of the riot rather than the interrogation after the event. However, to encourage regional officials immediately to sweep up unruly subjects, he argued that Anning's arrangement of the matter was appropriate despite his rush in carrying out executions. One of the Qianlong emperor's worries was the spread of rumours and political criticism, which usually allowed things to get out of control. This is why the Qianlong emperor was seriously concerned about the "wicked people"—most of them did not commit robbery or manslaughter, but their actions might trigger more serious social revolt. Moreover, a prompt execution might quickly suppress demonstration, but it could also fuel popular sentiment. The young emperor certainly remembered the case of Zhang Weidong and the more recent incident of Gu Yaonian. He had to gain sufficient wisdom to make use of expedient punishment. He also had to instruct his officials to develop their own acumen, while exerting his control over the bureaucratic system in the battles against social problems.

In the following years, the Qianlong emperor continued to support the use of hastened executions. He frequently cited the Substatute on Wicked People and Substatute

³⁰⁷ Zhu Qingqi 祝慶祺 et al., *Xing'an huilan sanbian* 刑案匯覽三編 (Three Volumes of Conspectus of Penal Cases) (Beijing: Beijing guji chubanshe, 2000), 2245–46.

³⁰⁸ Huang Liuhong 黃六鴻, *Fuhui quanshu* 福惠全書 (The Complete Book of Happiness and Benevolence) (Taipei: Jiusi, 1978), *juan* 13, *xingming* 3, *jianjin*, 1–3.

on Scoundrels (*jianmin li* 奸民例). The punishments he used included both regular execution methods and death by bamboo sticks.³⁰⁹ In 1758, when the summary execution law had been in practice for over a decade, an eclipse appeared and shocked the Qianlong emperor. Having stated that such unusual phenomena represented a warning from Heaven,³¹⁰ the emperor proclaimed that he would keep diligently attending to government affairs. Probably because of fear of reactions to or rumours about the meaning of the eclipse, the emperor requested that all ministers and high officials offer their own political critiques. The Imperial Censor Tang Xianjia (湯先甲) submitted a memorial called “Criminal Law Should Be Expediently Adjusted” (*xingfa yi wei biantong* 刑法宜為變通) to the emperor. In the memorial, Tang used a sarcastic tone to explain how the idea of expediency had been implemented in the criminal justice system. His critiques concerned four major issues, including the literary inquisition and the persecution of persons who collected unofficial historical sources. After viewing the memorial, the Qianlong emperor quickly called Tang to a face-to-face discussion. According to a late Qing scholar’s narrative, the emperor spoke rigidly and loudly to Tang. Tang was not afraid of the emperor. He answered the questions in a slow and mild tone, making sure that the throne understood his ideas. The entire interrogation was over ten *ke* in length (more than two and a half hours). No one knew what they talked about during the meeting. Only a few fragments of the memorial remain in the record. It was said that the Qianlong emperor praised Tang for his honesty and loyalty. However, most

³⁰⁹ *Qing shilu, Gaozong shilu*, 341: 718a, May 24, QL14 (1749).

³¹⁰ *Qing shilu, Gaozong shilu*, 259: 355a–355b, February 29, QL11 (1746); *Qing shilu, Gaozong shilu*, 387: 84b–85a, April 21, QL16 (1751).

people believed that the talk had involved something that should not be announced in public.³¹¹

The Qianlong emperor announced his version of the discussion shortly after the talk. In defence of his expedient use of the death penalty, the Qianlong emperor argued that Tang's critique was "pedantic and ridiculous."³¹² He condemned Tang for misinterpreting all the Qianlong emperor's policy as inflicting severe punishments (*cong zhong* 從重) and obscuring the standard of deciding sedition cases (*ni'an* 逆案). He cited Tang's words that

criminal officers did not need to comprehend the meaning of each case; they only need to apply [the severe punishments legislated in] the statutes to the cases they adjudicated, acting like our dynasty's criminal law was always lenient except for me [the emperor] who insisted on severe punishment; thus a number of criminal officers intentionally catered to my preference. 有刑官何必立意求深，多援條例之語，一似我朝刑法，本係從寬，至朕獨為加重，刑官不無有意迎合者。³¹³

To strike back at Tang, the Qianlong emperor argued that the boundary between strictness and expediency was entirely dependent on the timing and circumstances. He particularly listed some recently pardoned cases to explain that he did not always inflict

³¹¹ Chen Kangqi 陳康祺, *Langqian jiwen* 郎潛紀聞 (Miscellaneous Notes of a Senior Official) (Beijing: Zhonghua shuju, 1984), 171.

³¹² *Qing shilu*, *Gaozong shilu*, 576: 334b–337a, December 2, QL23 (1758).

³¹³ *Ibid.*

severe punishments. Even in the adjudication of sedition cases, he did not presume the offences as heinous. He insisted that he always investigated the cases before he made judgments and decided the punishment. However, he also stressed that the sedition cases he recently dealt with “not only spread heterodox teachings but also incited and confused the foolish people” (*budan xieyan zuodao, shanhuo yumin* 不但邪言左道, 煽惑愚民). He claimed that these villains did not deserve any rehabilitation. In order to suppress these villains, it was necessary to amend and update the substatures because the existing statutes could hardly adjust to the changing society and thus failed to punish the emerging new offences with varied characteristics.³¹⁴

Whether or not his statement was to warn Tang and other bureaucrats, the Qianlong emperor’s response perfectly reflected his policy toward expedient punishment and routinized substatures. On the surface, the Qianlong emperor criticized the idea of expediency and asserted that punishment of serious crimes should strictly follow the established procedures and the regular rules in statutes. But in fact, the Qianlong emperor stressed the usefulness of substatures that could frequently be amended and conveniently analogized to new crimes. This is why his decisions largely relied on the substatures on rootless rascals and wicked people. While he emphasized the situation of each case, he used the established rules in substatures in a way that created a new rule for newly detected offences. In particular, he argued that the Grand Council allowed him to understand the reality in far places without leaking secrets to the public. As an ambitious emperor, the Qianlong emperor made use of his political control instruments in the realm of judicial affairs. He used all these resources to create a distinct summary execution

³¹⁴ *Ibid.*

system that forced all judicial officials to break the restrictions of the regular institution and procedure.

After he had condemned Tang as “a minor official who did not know anything about governmental affairs,” the Qianlong emperor did not punish him for his critique of expedient punishment. He claimed that he had returned the memorial to Tang but that it was necessary to announce his comments publicly so that everyone knew them and would follow his ideas. After this debate, no one ever strongly challenged the Qianlong emperor’s judicial expediency policy. The Qianlong emperor continued to promote severe punishment and blamed the officials who did not thoughtfully consider his advice and guidelines. In 1760, for example, Chen Hongmou reviewed a case of a robber who murdered the victims after he obtained their valuables. Chen did not use the Qianlong emperor’s severe statutes and simply adopted regular statutes and procedure that required a protracted judicial review. The report was successfully submitted to the Board of Punishment. The officials at the Board of Punishment certainly knew the emperor’s preference. They turned down the submitted report and forwarded the case to the emperor. The Qianlong emperor then seriously criticized Chen for not knowing that sticking to the regular rules would incite vicious offenders and might also cause similar crimes to appear in the future. He commanded Chen to follow the procedure of “submitting a routine memorial and carrying out execution at the same time.”³¹⁵ This was the Qianlong emperor’s consistent style throughout the last decades of his reign. He created a large space for judicial expediency allowing the monarchical power to effectively control

³¹⁵ *Qing shilu, Gaozong shilu*, 626: 1032b–1033a, December 9, QL25 (1760).

bureaucracy and society and, more importantly, laying the foundation of a series of judicial reforms including the rise of regional powers in bandit suppression.

Conclusion

During the first half of the Qing dynasty, China witnessed tremendous social and economic change. The explosive population and rapid commercialization created a series of social problems. These forced the emperors to change the existing judicial system in order to equip the empire with efficient weapons. The invention of the Grand Council, the imperial memorial, and the emperor-led summary execution system brought monarchical power to an unprecedented level. The extensive use of the terms “rootless rascals” and “wicked people” allowed both central and regional authorities to avoid the regular bureaucratic system. This change demonstrated a different kind of centralization process that tended to downplay the role of central judicial officials while strengthening the direct tie between the monarch and regional authorities. The new system of emperor -governor decision-making provided a significant basis for the later reform of summary execution. During the nineteenth century, the rise of regional powers gradually became an important feature of Chinese law that challenged the Qing state until the last decade of the dynasty.

Chapter 3: Regionalization of Death Penalty: The Spatial Structure of Quick

Justice

In recent years, officials also knew that the spread of sectarian bandits was nearly irresistible. Since they were particularly unwilling to see the disaster appear in their own jurisdiction, they covered up incidents just to keep the peace for as little as one day. As a result, they accumulated decades-long cases that deserved further attention and yet remained unprocessed; they simply left the cases long delayed. They also accumulated decades-long cases with villains that deserved execution but remained alive; they simply tolerated these villains acting against the law. These villains eventually became today's great bandits. 蓋緣近年有司亦深知會匪之不可遏，特不欲其禍自我而發，相與掩飾彌縫，以苟且一日之安。積數十年應辦不辦之案，而任其延宕；積數十年應殺不殺之人，而任其橫行。遂以釀成目今之巨寇。— Zeng Guofan³¹⁶

While the Qianlong emperor significantly extended his monarchical power in the reform of the death penalty, the regionalization of summary execution also took place in some areas of China's criminal justice system. The hastened execution initially started in the punishment of wicked people and parricides, and was then extended to deserting exiles and long-detained felony criminals. This trend started by the end of the eighteenth century, when the expanded empire encountered challenges from the increasing number of bandits, popular protests, and, more importantly, the gradually worsening financial constraints of the regional judicial system. The challenges existed at all levels of the bureaucracy, including the management of exiles and the prisoner transfer procedure, the

³¹⁶ See Zeng Guofan 曾國藩, *Zuben Zeng Wenzheng gong quanji* 足本曾文正公全集 (The Unexpurgated Complete Works of Zeng Guofan) (Changchun: Jilin renmin chubanshe, 1995), 385.

operation of local armed groups, and the wide spread of men using force that existed in both orthodox and heterodox realms. These challenges forced the Qing court to initiate a series of reforms. During the Qianlong reign, the court legislated a number of summary execution laws for the cases of deserting exiles. The Qianlong emperor also revised the regulations in order to simplify the judicial review procedure. Both of these reforms were maintained and expanded during the nineteenth century. During the Jiaqing (1796–1820) and Daoguang (1821–1850) reigns, the emperors campaigned for a series of reforms that aimed to institutionalize provincial-level judicial administration. Similar to Qianlong emperor's reforms of exile and judicial review, the new reforms during the Jiaqing-Daoguang period increased the use of summary execution and granted governors powers to execute pirates and various kinds of bandits. During the Xianfeng (1850–1861) and Tongzhi (1862–1874) reigns, regional authorities continued to use summary execution in the name of cleaning up bandits and judicial backlog. This trend continued to the end of the dynasty when the regional forces came to constitute a strong power in the execution of felony criminals.

For the emperors following the Qianlong reign, problems came from the legacies of prosperity and expansion. The population growth following the economic development deepened the disparity between rich and poor and led to the increase of lower-class people including migrants, vagrants, peasant workers, and various marginalized people. Sectarian groups and mutual aid organizations provided them secure places in the rapidly changed circumstances.³¹⁷ These groups did not necessarily oppose the government's

³¹⁷ Studies have challenged the thesis that presumes the secrecy of “secret societies.” On the development of “secret societies,” see David Ownby and Mary Somers Heidhues, eds., *“Secret Societies” Reconsidered: Perspectives on the Social History of Modern South China and*

authority and orthodox ideologies. As Barend ter Haar argues, many sectarian groups incorporated various thoughts into their religious beliefs, including those widely considered the core of the state's orthodox philosophy.³¹⁸ However, the highly eclectic nature of these groups and the repressive policies enacted by the government compelled some sectarian groups to connect with illicit marginalized groups and engaged in banditry, robbery, and smuggling. While the same economic and demographic growth gave rise to both sectarian and non-sectarian groups, the government gradually reinforced a severe policy against these groups and, in turn, turned some peaceful groups into rebellious ones. The judicial system then encountered an increase in cases with regard to the disputes and turbulence where these groups were gradually involved. What made things worse was the increased legislation of death sentences and the protracted procedure of judicial review. During the Qianlong reign, the existing exile and imprisonment systems accommodated a large number of criminals. The large criminal population eventually eroded local government's judicial efficiency and fiscal condition. These problems were all inherited by the Jiaqing emperor, whose reign involved an even more serious expansion in judicial cases than the Qianlong emperor's.

Southeast Asia (Armonk: M. E. Sharpe, 1993); David A. Ownby, *Brotherhoods and Secret Societies in Early and Mid-Qing China* (Stanford: Stanford University Press, 1996); Zhou Yumin 周育民 and Shao Yong 邵雍, *Zhongguo banghui shi* 中國幫會史 (History of Secret Societies in China) (Shanghai: Shanghai renmin chubanshe, 1993); Zhuang Jifa 莊吉發, *Qingdai mimi huidang shi yanjiu* 清代秘密會黨史研究 (Research on the History of Secret Organizations in the Qing Period) (Taipei: Wenshizhe chubanshe, 1994); Qin Baoqi 秦寶琦, *Hongmen zhen shi* 洪門真史 (The Genuine History of the Hongmen) (Fuzhou: Fujian renmin chubanshe, 1995); Barend J. ter Haar, *Ritual and Mythology of the Chinese Triads: Creating an Identity* (Leiden: Brill, 1998).

³¹⁸ See ter Haar, *Ritual and Mythology of the Chinese Triads*.

When Jiaqing came to power, he immediately faced challenges from southeast piracy and the rise of the White Lotus Rebellion. Jiaqing took this opportunity to execute the Qianlong emperor's favourite official Heshen (和珅), citing that the latter failed to suppress the rebellion. He continued to use the Grand Council as a channel to collect local information and control local authorities, but he also created his own way of resisting the bureaucrats through the same channel. The capital appeal system was one among many reforms. This system encouraged ordinary people to bring their litigations to the centre, while also increasing judicial backlog at the regional level. In the following century, China witnessed the largest campaign against judicial backlog and villains in regional prisons. Several governors were compelled to introduce new institutions to clean up the backlog. The governors gradually played an extremely significant role in criminal justice. In the end, the new provincial-centred practices and the emerging demand to suppress bandits and deserting criminals led to the regionalization of the death penalty.

In the following analysis, I first explore the development of the execution of deserting exiles from the early Qing to the mid-Qing. As I argue, the punishment of exile was initially used to create a zone of exception, even though the emperors continued to use the discourse of leniency in punishment. After the Yongzheng reign, the Qing state gradually increased the use of summary execution against escaped exiles and deserting soldiers. The lands of exile were not necessarily borderlands, where policies were usually different from non-borderland regions. However, the execution of deserting exiles constantly reinforced a zone of exception inside or outside of the borderlands. This policy continued after the Qianlong reign. With this punishment, the Qing Empire continuously considered the banished criminals to be those that could be executed anytime, following

the logic that extreme punishment had already been “waived” and these convicts should not be pardoned again if they didn’t cherish the government’s leniency.

The second section of the chapter traces the development of prisoner transfer. The long prosperity and population growth made the regional prisons extremely crowded. The regional authorities were gradually unable to afford the cost of detaining and transferring prisoners. While the Jiaqing emperor retained the conventional approach that required officials to work hard and efficiently, he also introduced a few reforms that reduced the procedure of prisoner transfer. The large-scale reduction of procedure eventually took place during the Daoguang reign, where banditry, robbery, and financial constraint problems forced the local government to request a change in the judicial system.

The third section discusses how governors and lower-rank officials punished bandits during the devastating Taiping Rebellion. The law of summary execution was recognized by the imperial court and extended to all provinces. While the Qing court extensively relied on Zeng Guofan’s (曾國藩) Xiang Army and local militia, it also intended to prevent the latter from overly expanding his power. Using the case of Duan Guangqing (段光清), an official who served in Zhejiang during the war, this section discusses the complex process of dealing with bandits. In the actual practice of summary execution, authorities from different levels and positions adopted different strategies and categories of execution. This practice was usually a product of political struggles and negotiations within the bureaucracy and local network.

The last section explores how summary execution was continued after the Taiping Rebellion. The Qing court constantly made the law an exception, while it also extended the special laws in order to sweep up bandits in the most economical way. Also, the wide

spread of men using force and the rising number of revolutionaries forced the court and governors to take the exceptional rules as routine practice. In the end, the summary execution of bandits became a common practice at the regional level until the fall of the dynasty.

Constructing Zones of Exclusion: The Deserters in the Lands of Exile

When the prosperous empire encountered inefficiency issues with regard to the judicial review system and punishment of serious crimes, it also faced an increasing challenge in the management of criminals. Many reports reveal that the cases of escaping criminals increased significantly during the eighteenth and nineteenth centuries. On the surface, this phenomenon was related to the increasing number of crimes and judicial cases—a trend that was partly due to the expansion of the economy and population. However, in a broader sense, the growth of desertion was closely associated with the expansion of empire, the politics of exile (*liu* 流), the governance of borderlands, and the financial constraints on the judicial system. While the Qing court apparently used exile as a substitute for the death penalty and even granted monetary redemption to certain types of exiles,³¹⁹ it also increased the use of severe laws and permitted regional authorities to execute deserting criminals without prior approval. As Joanna Waley-Cohen persuasively points out, the strategic use of conditional exile and the interchangeable nature of execution and banishment revealed the Qing court's reluctance in both taking away

³¹⁹ For the use of monetary redemption in the punishment of exile, see Joanna Waley-Cohen, *Exile in Mid-Qing China: Banishment to Xinjiang, 1758–1820* (New Haven: Yale University Press, 1991), 73–76.

human life and abandoning life-threatening instruments.³²⁰ The development of exile and the growth of summary execution laws against deserting criminals were both responses to the expansion of the empire.³²¹ The ideal of centralization had apparently become one of many priority concerns of the Qing court, but the state had to adjust the system and collaborate with regional powers so that the judicial cost could be reduced and the large population of criminals could be managed efficiently.

In order to analyze how the Qing government developed its summary execution laws in the wake of desertion of criminals, this section explores the punishment of deserting exiles that particularly occurred in the remote lands and the south-western “insalubrious regions” (*yanzhang* 煙瘴). Compared to the desertion of criminals during the prisoner transfer procedure, a phenomenon that also emerged during the eighteenth century and then impacted regional judicial practice during the nineteenth century, the Qing government placed more emphasis on the desertion of exiles in borderlands because it was related to the security of frontiers and military discipline in the far off lands. Throughout the late seventeenth century and the entire eighteenth century, the Qing court enacted thirteen summary execution statutes for the punishment of deserting exiles and six summary execution statutes against the violation of military discipline in the borderlands. While the desertion of exiles did not necessarily happen in the borderlands, most of these severe laws targeted crimes in places far from the political centre, particularly Xinjiang, Yunnan, Guizhou, Guangxi, and Guangdong.³²² Except for the first two statutes, all these laws were legislated under the Qianlong emperor, spanning

³²⁰ Waley-Cohen, *Exile in Mid-Qing China*, 77.

³²¹ Waley-Cohen, *Exile in Mid-Qing China*, 76.

³²² Derk Bodde and Clarence Morris, *Law in Imperial China. Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge, MA: Harvard University Press, 1967), 84–85.

from the first year to the fifty-first year of his reign (Table 3.1 & Table 3.2). In contrast, the Qing court enacted only three summary execution substitutes for offences involving regular imprisonment. Two substitutes enacted in the late 1780s were for desertion during detention and the procedure of prisoner transfer (Table 3.3).

Table 3.1. Summary Execution Substitutes for Deserting Criminals

Year	Reign	Offence	Punishment
1689	KX28	Pardoned convicts who had been banished and enslaved to Manchuria and who deserted or committed robbery	Immediate execution
1709	KX48	Criminals in exile who committed murder	Immediate execution
1736	QL1	Criminals exiled to malarial areas who returned to their native places without permission	Request an imperial edict for immediate execution
1761	QL26	Criminals banished to the military who deserted and resisted detention	Request an imperial edict for immediate execution
1763	QL28	Criminals exiled to Xinjiang, Yunnan, Guizhou, Guangxi, and Guangdong who deserted	Request an imperial edict for immediate execution

Year	Reign	Offence	Punishment
1765	QL30	Criminals exiled to Yili who deserted	Immediate execution
1767	QL32	Pardoned robbers in exile who deserted	Request an imperial edict for immediate execution
1767	QL32	Pardoned criminals banished to the military who deserted and committed banditry	Immediate execution
1772	QL37	Criminals who deserted during the exile and the transfer procedure	Immediate execution
1776	QL41	Pardoned soldiers who re-deserted	Request an imperial edict for immediate execution
1779	QL44	Criminals exiled and enslaved in Heilongjiang deserted	Request an imperial edict for immediate execution
1783	QL48	Criminals exiled to Yili for using psychedelics on others circulated the prescriptions, robbed with psychedelic, and deserted	Request an imperial edict for immediate execution

Year	Reign	Offence	Punishment
1786	QL51	Criminals exiled to Xinjiang deserted	Immediate execution

Sources: *Qing shilu* (清實錄); *Duli cunyi* (讀例存疑); *Da Qing huidian shili* (大清會典事例).

Table 3.2. Summary Execution Substatutes for Military Offences in Borderlands

Year	Reign	Offence	Punishment
1754	QL19	Soldiers who deserted on the battlefield and stole horses and weapons	Request an imperial edict for immediate execution
1767	QL32	Soldiers in Xinjiang who committed daylight robbery and murder	Submit a memorial to the throne and carry out execution at the same time
1768	QL33	Manchu and Han soldiers banished to Yili who re-deserted	Immediate execution

Year	Reign	Offence	Punishment
1777	QL42	Leakage of military information along the borders of Yunnan Province except for the areas close to Yongchang and Shunning	Request an imperial edict for immediate execution
1779	QL44	Border officers who accepted bribes and allowed foreigners to cross the borders	Immediate execution

Sources: *Qing shilu* (清實錄); *Duli cunyi* (讀例存疑); *Da Qing huidian shili* (大清會典事例).

Table 3.3. Summary Execution Substatutes for Offences during Imprisonment

Year	Reign	Offence	Punishment
1733	YZ11	Prisoners who acted rudely and illegally and engaged in gambling	Request an imperial edict for immediate execution
1788	QL53	Prisoners who escaped in a group of more than three people	Immediate execution

Year	Reign	Offence	Punishment
1789	QL54	Criminals subject to capital punishment who escaped during the transfer-for-verdict procedure	Immediate execution

Sources: *Qing shilu* (清實錄); *Duli cunyi* (讀例存疑); *Da Qing huidian shili* (大清會典事例).

While the Qing court was fearful of the illegal activities of the banished, it was extremely interested in how these criminals could be used for the development and local defence of the place where they were exiled. Similar to the Yuan and Ming Dynasties, the Qing regime perceived exile as not only an adjustment of the death penalty but also a source of manpower in the place of exile.³²³ When the Qing regime still hadn't stabilized its rule over the vast Han Chinese settlement, it banished a number of Han Chinese criminals and political dissidents to Manchuria to maintain its land and secure economic resources. During the Shunzhi reign (1643–1661), the Qing government invented the punishment of “banishing through displacement” (*liuxi* 流徙), which literally combined the punishments of exile (*liu* 流) and displacement (*xi* 徙) and particularly served for

³²³ For the use of military exile and its correlation with local development in the Ming dynasty, see Wu Yanhong 吳艷紅, *Mingdai chongjun yanjiu* 明代充軍研究 (Studies on the Military Exile System of the Ming) (Beijing: Shehui kexue wenxian chubanshe, 2002).

exile to Manchuria.³²⁴ This punishment enabled the Qing government to send various kinds of exiles, including disloyal officials and military exiles (*junliu* 軍流), to the designated area in the northeast without following the established rules.³²⁵

The invention of banishing through displacement reflected how early Qing rulers adjusted exile laws while inheriting Ming institutions. During the late 1670s, the Qing court further applied banishing through displacement to those whose death sentences were dismissed, making it flexible to use these criminals as manpower while manipulating the image of lenient rulership.³²⁶ Such practice continued until the mid-eighteenth century when the Qing engaged in warfare with the north-western powers. After the Qing government had stabilized its rule over the majority Han Chinese, the punishment of banishing through displacement was gradually replaced by a more complete system of exile that sent criminals across the country. Despite all these changes, the core idea of exile remained unchanged. The Qing rulers constantly placed this punishment within its framework of distributing resources of these “bad elements,” while using the death penalty as a supplementary instrument in case of necessary suppression. This system resembled its approach toward men who used force and the network of violence, particularly in the realm of the gradually important class of “braves” (*yong* 勇) that had an enduring effect upon Chinese politics in the following centuries.

³²⁴ Xie Guozhen 謝國楨, “Qingchu dongbei liuren kao” 清初東北流人考 (Research on the Northeast Exiles during the Early Qing Period), in *Mingmo Qingchu de xuefeng* 明末清初的學風 (The Style of Study in the Late Ming and Early Qing Period) (Shanghai: Shanghai shudian, 2004), 97–170.

³²⁵ Su Yigong 蘇亦工, *Ming-Qing lü dian yu tiaoli* 明清律典與條例 (The Codes and Substatutes in the Ming and Qing) (Beijing: Zhongguo zhengfa daxue chubanshe, 2000), 121–22.

³²⁶ Liu Jinzao 劉錦藻, *Qingchao xu wenxian tongkao* 清朝續文獻通考 (Continuation of the Comprehensive Examination of Literary and Documentary Sources in the Qing Dynasty) (Taipei: Taiwan shangwu yinshuguan, 1987), juan 203, 6678b.

The extensive use of exile certainly increased the cost of the judicial system. First of all, the distant route of exile and the severe climate of the north-eastern regions caused considerable casualties. This made it difficult to make use of the manpower, and the policy of lenient punishment nearly failed. The imperial court repeatedly expressed its mercy to the deceased exiles because in the end their punishment was more like the death penalty than exile.³²⁷ In order to maintain this system and secure the manpower for the ongoing cultivation projects, the Qing court looked for habitable places for exile and halted the prisoner transfer process in some cold areas during the long winter season.³²⁸ Second, the operation of exile consisted of criminal transfer and imprisonment. The cost of transfer increased when transportation was difficult and weather conditions were severe. Imprisonment inevitably involved bribes and abuse of power, which at times caused the death of poor exiles unable to afford bribes.³²⁹ In some cases, wives who accompanied the exiles were even unscrupulously humiliated (*zixing lingru* 恣行凌辱) by prison officers.³³⁰ Criminals who lacked money and personal relations could barely enjoy protection. The Qing court repeatedly imposed severe punishment against these prison officials, but similar things occurred not only in Manchuria but also elsewhere in the latter half of the dynasty. Moreover, the banishment of such a large crowd enhanced the difficulty of criminal management. Particularly after the 1650s, when the Qing court

³²⁷ Kun Gang 崑岡 et al., *Da Qing huidian shili* 大清會典事例 (The Precedents of the Collected Statutes of the Great Qing) (Beijing: Zhonghua shuju: 1991), Xingbu, juan 744, Kangxi 9 nian, vol. 9, 215a; *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu* 大清聖祖仁皇帝實錄, in *Da Qing lichao shilu* 大清歷朝實錄 (Taipei: Huawen, 1964 reprint), Kangxi, 102: 28a; *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 118: 240a.

³²⁸ Kun, *Da Qing huidian shili*, Xingbu, juan 744, Kangxi 9 nian, vol. 9, 215a.

³²⁹ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 143: 573b.

³³⁰ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 36: 487a–487b.

increased the banishment of criminals who committed robbery, manslaughter, and fraud to exile in Manchuria, the crimes and unruliness of exiles gradually emerged as an urgent issue in the exile system.

The desertion of exiles quickly emerged as a problem. During the late 1660s, the Qing court detected growing bribery in cases of criminals' desertion. The Qing government had previously dealt with similar situations, particularly in its imported system that enslaved Han Chinese criminals to Manchus (*Manzhou jiaren* 滿洲家人), primarily serving noblemen's families.³³¹ Many slaves escaped from the northeast by paying bribes to the officers. The Shunzhi emperor imposed serious punishments on these officers and even sentenced officers of certain ranks to death.³³² Probably because of this policy, the succeeding Kangxi emperor focused more on the punishment of supervising officers than the escaped criminals in the practice of exile.

In the ninth year of his reign (1667), the Kangxi emperor approved a regulation stipulating that all escaping military exiles should be punished by one hundred heavy bamboo strokes or forty extra-large bamboo strokes. All supervising officials of deserted military exiles should be fined six months of salary, and the unit commander should be fined three months of salary. If a military exile deserts during the process of criminal transfer, the transportation officer should be fined an entire year's salary. Although Kangxi did not sentence these officers to death, his regulation stipulated that all officers who received bribes and tolerated the exiles escaping would be seriously punished, and

³³¹ *Da Qing Shizu Zhang (Shunzhi) Huangdi Shilu*, Shunzhi, 84: 658a.

³³² *Da Qing Shizu Zhang (Shunzhi) Huangdi Shilu*, Shunzhi, 86: 676a–678a.

their supervisors would be sent for investigation as well.³³³ The core idea was to prevent desertion through the punishment of officials. Kangxi at this point was not willing to kill escaped exiles, despite their serious crimes. In 1682, when speaking of the increased death of criminals during the exile process, he explicitly stated that “Considering that such people had violated our laws and institutions [we did not need to sympathize with their miserable situations]. But now that they had been pardoned, our original aim was to let them live [instead of making them suffer or die]” (*Nian cibei sui gan xiandian, dan jijing miansi, yuan ling qi shengquan*. 念此輩雖干憲典，但既經免死，原欲令其生全。).³³⁴ Kangxi’s statement certainly involved the rhetoric of leniency because he was apparently concerned about the deterrent effect of exile and the value of sending criminals to the northeast. In 1684, he announced that all slaves who escaped three times could be still be pardoned from the death penalty and then relocated to Ningguta to continue their status as slaves.³³⁵ His growing control over exiles’ family members was also part of his policy of indirect control. Throughout his reign, he required more exiles to go with their wives (*qianqi* 僉妻) and provided care to exiles’ wives and consolation money when exiles died, in the hope of not only fulfilling humanitarian ideals but also preventing the exiles from escaping from the borderlands.³³⁶

Kangxi’s lenient policy lasted until the mid-1680s when the empire eventually suppressed the Three Feudatories in the south and the Zheng Regime in Taiwan. The

³³³ Jiang Pu 蔣溥 and Sun Jiagan 孫嘉淦 et al., *Da Qing huidian zeli* 大清會典則例 (Selected Precedents of the Statutes of the Great Qing) (Taipei: Taiwan shangwu, 1983), Bingbu, juan 123, 38a–39a; Kun, *Da Qing huidian shili*, Libu, juan 130, Kangxi 9 nian, vol. 2, 682a.

³³⁴ Kun, *Da Qing huidian shili*, Xingbu, juan 744, Kangxi 21 nian, vol. 9, 215b–216a.

³³⁵ Ibid.

³³⁶ Liu, *Qingchao xu wenxian tongkao*, juan 203, 6679b–6679c.

relatively peaceful empire got the chance to reflect on the policy regarding the exiles in Manchuria, particularly those committing felony crimes and receiving pardons from the court. In 1689, after a number of reports regarding the crimes of exiles in Manchuria, the Kangxi emperor enacted a statute allowing military generals to execute summarily pardoned and enslaved convicts who “refused to repent of their former sins” and deserted and committed robbery.³³⁷ The emperor continued to send felony criminals to Manchuria, insisting that his policy was out of a leniency concern that compelled him to either dismiss the death penalty (*miansi* 免死) or reduce the punishment of felony criminals (*jiandeng* 減等).³³⁸ Despite all this rhetoric, on several occasions Kangxi discussed the viciousness of pardoned criminals and stated the necessity of using the death penalty and military suppression as an instrument to control exiles. In 1691, Kangxi exhorted his officials,

Human life is a really important matter. In my many years of adjudicating robbery cases, I only sentenced the leading offenders to death. As to the accomplices of these offences, I leniently dismissed the death sentences of accomplices and banished them to Heilongjiang. I once asked General Sabusu if the gathering of these criminals might cause trouble and disturb the place where they were exiled. He replied in a memorial stating that there are already a great number of soldiers in New Manchuria and that the exiled villains were respectively enslaved to different families. This

³³⁷ Kun, *Da Qing huidian shili*, Xingbu, juan 744, Kangxi 28 nian, vol. 9, 216b.

³³⁸ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 148: 641b; *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 158: 742a.

makes these criminals weak and isolated. It is hard for them to form a strong force or fulfil their wishes to commit crimes. In this sense, many exiles survived without dying on the road, and they have significantly benefited New Manchuria. 人命所關重大。朕數年以來，將為盜者止誅首惡，為從者從寬免死、發往黑龍江。朕曾問及將軍薩布素，此等罪犯聚集，或致生事。據奏，新滿洲兵眾多，將兇徒分給為奴，勢孤力散，惡不能逞。由此觀之，不但全活甚眾，且新滿洲資益良多矣。³³⁹

Apparently, Kangxi's policy was to secure the use of banished criminals. He had cautiously prevented these criminals from causing trouble in the borderlands, and thus he only sent felony criminals to relatively controllable places. After 1688, when the Qing government started its warfare against the Zunghars, Kangxi did not send exiles to the Mongolian front. He continued the policy of banishing robbers to Manchuria throughout the last two decades of the seventeenth century, even after the defeat of Galdan in 1697.³⁴⁰ In the meantime, Kangxi extended the scope of the summary execution law against the deserting exiles in Manchuria. In 1708, he commanded the Board of Punishment to execute immediately those pardoned convicts who escaped from the lands of exile and committed crimes.³⁴¹ The following year, he enacted this policy to a statute, stipulating that any such criminals who committed murder should be quickly

³³⁹ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 188: 998b.

³⁴⁰ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 194: 1053b–1054a; *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 201: 44a–44b.

³⁴¹ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 133: 330a.

executed regardless of their original offence before banishment.³⁴² All in all, during the Kangxi reign, the Qing government had established summary execution laws that allowed regional military authorities to execute deserting exiles without prior approval. The lack of administrative personnel and the time-consuming process between the central government and the remote lands of exile certainly constituted an important factor behind this policy. But the Qing court was also concerned about the negative influence of criminals upon Manchuria, particularly when the place was gradually manifested as an essential part of Manchu identity.³⁴³ The Qing state had stabilized its rule and extended its territory to places with diverse peoples. It had to adjust the policy of banishment and re-consider the use of the death penalty toward the pardoned convicts.

In 1715, the Qing court eventually started to banish pardoned felony criminals to the Mongolian settlement. The reason, as Kangxi stated, was that the exiles banished to Heilongjiang and the Sanxing region were all vicious people and that “once these people are exiled to the same place, they inevitably cause more troubles and commit more crimes and violence.”³⁴⁴ Kangxi also stated that the new destinations in Mongolia, primarily Khovd and Ulaangom, had good land and water resources and thus the exiles should participate in land cultivation projects there.³⁴⁵ The succeeding Yongzheng and Qianlong emperors continued to increase the banishment of pardoned criminals to Mongolia, arguing that the exiles in Manchuria had affected local security. In 1725, the Yongzheng emperor commented that the pardoned convicts sent to Manchuria were all

³⁴² Xue Yunsheng 薛允升 and Huang Jingjia 黄静嘉, eds., *Duli cunyi chongkanben* 讀例存疑重刊本 (Questions about the Laws of the Qing Dynasty: A Reprint and Annotated Version) (Taipei: Chengwen, 1970), *juan 3, minglilü shang 3, tuliuren you fanzui 2*, 81–82.

³⁴³ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 201: 49a–49b.

³⁴⁴ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 280: 738b–739b.

³⁴⁵ *Ibid.*

“people of bandit type” (*feilei* 匪類). Their offspring might not become “people of good type” (*shanlei* 善類). Once these people spread around, “good customs will be destroyed” (*feihuai fengsu* 廢壞風俗) and the villains of this sort would outnumber the military.³⁴⁶ In 1736, the Qianlong emperor further argued that the gathering of these “bandit types” would make local people “infected with bad habits” (*ran e-xi* 染惡習). As a result, the Qianlong emperor commanded that all Manchu exiles should be sent to Manchuria and all Han Chinese exiles should be sent to “insalubrious regions.”³⁴⁷

The Manchu-Han differentiation policy marked a significant departure from the Qianlong emperor’s predecessors. After defeating major rebellions, the Qing Empire was able to consolidate its power by clarifying ethnic boundaries. The separation between Han and Manchu exiles not only fulfilled the emperor’s claimed ideal of preserving the Manchu’s “simple and unadorned temperament” (*zhipu zhi xi* 直樸之習) but also allowed the Qing court to manipulate ethnic policy and maximize the use of different peoples without universalizing the law of exile.³⁴⁸ From 1736 to 1776, the Qing court enacted a series of laws authorizing regional military authorities to execute summarily escaped Chinese exiles. The laws allowed officers to kill escapees upon the date of arrest regardless of any offence they committed during their escape. In Manchuria, such a law was not enacted until 1779.³⁴⁹ The Qianlong emperor was less concerned about the negative effect of Manchu desertion than its Han Chinese counterpart. Manchuria had long lost Manchu people after the Qing regime had entered China proper. The Qianlong

³⁴⁶ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 30: 463a–464a.

³⁴⁷ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 16: 429a.

³⁴⁸ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 47: 811a–812b.

³⁴⁹ Please see Table 3.1.

emperor and his father, Yongzheng, had lamented on several occasions that young Manchu people lost their Manchu characteristics. To them, sending Manchus back to Manchuria carried cultural and educational meanings, even though the people they sent were criminals. Contrary to this, while some Han Chinese criminals were still sent to certain regions in Manchuria, the Qing court intentionally kept them under strict control and prevented them from escaping and straying in the area. In 1737, the Qianlong emperor commanded nine ministers that,

Recently, some banished criminals were relocated to insalubrious regions. The reason behind this policy was that such villains should not stay in Shengjing or neighbouring areas. Once they stay in these areas, they may alter Manchu's simple and unadorned temperament and make local people gradually infected with bad habits.... If banished criminals have no wives, they have no home to long for. They usually act alone and could easily escape from exile places. It is difficult to make use of these people. As a result, these single convicts together with other types of exiles should be sent to Yunnan, Guizhou, Sichuan, Guangdong, and Guangxi according to the statute enacted in the first year of the Qianlong reign (1736). They should be distributed to the far insalubrious regions and the areas that are relatively less insalubrious, and then placed under strict surveillance of local officials. 凡外遣人犯，近日改發煙瘴地方者，原因此等惡人，不宜在盛京等處，使滿洲直樸之習，有所漸染也。.....如無妻室子女者，伊等無家可戀，隻身易逃，難於使用。應將此等無妻子之遣犯，

并其餘各項遣犯，悉照乾隆元年定例，改發雲貴、四川、兩廣等省，
分別極邊煙瘴，與煙瘴少輕地方，交地方官嚴行管束。³⁵⁰

In the announcement, the Qianlong emperor listed nine types of offenders that were eligible to be sent to Manchuria. All of these Manchuria-bound exiles must be non-bannermen people (*minren* 民人) that had been married. Otherwise, they would have to be sent to the southwest regions. Apparently, criminals' marital status and (sub-)ethnic identity had become important factors in the policy of exile. In the following two decades, these factors continued to affect the summary execution laws against deserting exiles. Before the enactment of the 1761 statute that generalized the summary execution law for desertion, the Qianlong emperor had gradually established exile law as what I call the “special zone of punishment.” This approach constructed an exceptional zone of imperial law, allowing the state to place exile convicts in the space of exception. To a certain degree, these convicts resembled what Giorgio Agamben calls “bare life”—a person placed in the “state of exception” where his life can be taken by anyone, and the sovereign possesses authority over the body far beyond the power of the law.³⁵¹ They were distinct from their Western counterparts due to the Qing's multiethnic policy and territorial expansion, but they were also exceptional in many ways—their death penalty was waived due to institutionalized exceptions or the emperor's lenient policies; they were placed in a specific region outside the regular punishment locations; and finally,

³⁵⁰ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 47: 811a–812b.

³⁵¹ Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998); Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005).

they were executed by exceptional laws once they escaped from the places where they were exiled. Moreover, while the sovereign power behind the decision on each sentence essentially derived from the ultimate power of the emperor, the trend of Chinese summary execution included an increasingly significant role for regional power. This trend existed not only in China proper but also in the northern and southern borderlands that eventually adopted summary execution laws against all bandit-like action during the nineteenth century.

In fact, the special-zone approach encountered a number of obstacles, particularly when the empire developed an increasingly complicated exile system. One of these factors was the establishment of a distance-based exile system. Initially based on Ming law, this system was extended during the Yongzheng reign. Exiles were sent to nearly all the regions within the territory, depending on the severity of the offence and the native place of the offender. Many local officials complained about this system because exiles were transferred from other regions to their provinces. The Qianlong emperor was constantly involved in mediation between provincial governments, and he adjusted the exile routes. In some cases, he had to shut down an entire route of banishment and relocate exiles to another region. In 1742, the Zhejiang Surveillance Commissioner Xu Lin (徐琳) submitted a memorial questioning why exiles from the north were sent to the prosperous province of Zhejiang. He argued that the original end of exile was to move convicts to an impoverished and unproductive land. He perceived northern people as more aggressive than southern people. He further argued that convicts from the north were all “malicious scoundrels” (*xionghen zhi bei* 兇狠之輩). The Qianlong emperor did not respond in detail. He simply stated that he had read the memorial and would

deliberate the matter carefully.³⁵² Xu seemed to have offended the Qianlong emperor several times, and he was removed from office five years later.³⁵³ The Qianlong emperor apparently did not follow Xu's suggestion because his project of exile had to take various political and economic factors into account. In the following years, the Qianlong emperor continued to send exiles to Zhejiang except for Yuhuan and Dinghai because these places were isolated on the coast and produced important resources of salt.³⁵⁴ The Qianlong emperor had stopped banishment in other regions because of their strategic and political roles.³⁵⁵ All of these considerations were on a fluid and macroscopic basis and eventually affected the punishment policies.

In 1758, after several years of practising the combined system of exile, the Huguang Investigating Censor Liu Zongwei (劉宗魏) submitted a memorial to the emperor stating that distance-based exile had increased felony criminals in each province. These criminals, according to Liu, had left their hometowns and had no way to make a living. They gathered together and spread their skill at stealing. They even committed banditry and disturbed local communities. As a result, Liu argued that there was no need to distinguish between married and single convicts. All offenders who committed banditry, robbery, and grave destruction and were subject to military exile should be banished to Barköl in Xinjiang and detained in a new area equipped with walls or fences so that the area could be cordoned off. If these exiles committed crimes and escaped from the exile region, the military general in charge should request an imperial edict for

³⁵² *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 181: 350a–351a.

³⁵³ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 271: 547a–547b; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 288: 758b.

³⁵⁴ Kun, *Da Qing huidian shili*, Bingbu, juan 721, Jiaqing 14 nian, vol. 8, 950b–951b.

³⁵⁵ Kun, *Da Qing huidian shili*, Xingbu, juan 721, Qianlong 24 nian, vol. 8, 948b.

immediate execution without sending them to other exile regions.³⁵⁶ This suggestion exactly matched the Qianlong emperor's special-zone approach and was thus immediately approved. The emperor had longed for a system that could place all vicious exiles in a place outside the core region. He also needed a harsh law to execute quickly all the escaped exiles. Liu's proposal of "request an imperial edict for immediate execution" was harsher than the regular procedure. But he needed a much quicker procedure that could punish unruly criminals without the protracted process of bureaucratic communication.

In 1761, the Qianlong emperor enacted a punishment against military exiles who deserted and resisted detention. According to the statute, military officers of all exile regions across the nation had to place a request for an imperial edict, but they could immediately execute the convicts at the time of request (*huori qingzhi, jixing zhengfa* 獲日請旨，即行正法). The law was made nation-wide, probably because of the frequent exchange of exiles between regions. Exiles could relocate from one place to another, but they were all subject to this new rule.³⁵⁷ In 1763, a new statute further extended the punishment from military exile to regular exile in Xinjiang, Yunnan, Guizhou, Guangxi, and Guangdong.³⁵⁸ After this, the court enacted a series of statutes extending summary execution laws to most of the desertion cases. Particularly in Xinjiang and the transfer procedure, the Qing court permitted regional authorities to execute escaped convicts without any report. Under the Qianlong emperor's reform, the summary

³⁵⁶ The First Historical Archives of China (*Zhongguo diyi lishi dang'an guan* 中國第一歷史檔案館; Beijing), *Gongzhong zhupi zouzhe* (宮中朱批奏摺), No. 04-01-08-0001-005.

³⁵⁷ Xue and Huang, eds., *Duli cunyi chongkanben, juan 6, minglilü xia s, tulu qianxi difang* 45, 171–72.

³⁵⁸ Kun, *Da Qing huidian shili*, Xingbu, juan 783, vol. 9, 589b–591a.

execution law for deserting exiles had been mostly regionalized. Except for those cases that involved special circumstances and offences, central judicial officers did not need to review all these cases, and the regional exile officers could quickly execute the exceptional punishment as the imperial centre had expected them to do.

The Qianlong emperor's policy of executing exiles not only reflected a strong control over the criminal's body but also demonstrated his perception about the exceptional nature of exiles. In the eyes of the emperor, the state had bestowed several opportunities on the convicts, hoping that they would repent and transform themselves into good persons. If these people refused to learn from the lenient treatment, the educational punishment should turn to a harsh one utilizing an exceptional approach to end the convict's life. The Qianlong emperor's law was inherited by the succeeding emperors. Despite some revision, particularly during the Jiaqing reign, the law was maintained until the end of the dynasty when a comprehensive summary execution law was practised in almost all the regions within the nation. However, in the nineteenth century, bandit suppression gradually became the major form of summary execution. The new wave of bandit-hunt campaigns had its roots in the emergence of local militants and the crime-sweeping projects. These factors facilitated the continued flourishing of summary execution. More importantly, they sustained the power of governors, who then became a visible force in the practice of regional death penalties throughout the latter half of the nineteenth century.

A Shorter Trip to Death: Reforms in Prisoner Transfer

The Qianlong emperor was certainly aware that summary execution was a two-edged sword. By granting regional authorities extensive power over executing convicts, the imperial centre risked its control over the abuse of power and the expansion of regional power. However, during the Qianlong reign, another pressing issue challenged both imperial control and regional adjudication. The problem appeared in the protracted judicial review system, which created a large number of prisoners who had waited many years for their final execution. Many of these convicts were sentenced to delayed execution during the Autumn Assizes procedure. Cases of such type were conveniently called “old cases of delayed execution” (*laohuan* 老緩), which sparked extensive discussion during the Qianlong period.³⁵⁹ To a large extent, the new problem came from the existing institution and the lenient policies toward the execution of prisoners. Kangxi and Yongzheng both contributed to the worsening problem of lingering imprisonment, despite the fact that their reforms on bureaucratic communications had enabled the Qianlong emperor to respond promptly to urgent situations. What made things complicated was the mandatory prisoner transfer procedure, which required officials at each level to convey prisoners to assigned locations for joint meetings. The prolonged reviewing procedure and the long-distance transfer of prisoners enhanced the risks of escape, forcing the authorities to propose a wide variety of solutions to reform the transfer procedure. The Qianlong emperor had luckily inherited all the efficient instruments from his predecessors, but he also received all the institutional problems left by the previous rulers. He had attempted to impose aggressive policies in response to the

³⁵⁹ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 350: 834a–835b.

emerging problem of “wicked people.” Yet, simply quickening the execution of ringleaders could not resolve the accumulated prisoners because thousands of accomplices had flooded to the prisons rather than being executed on the spot. Not to mention that during the latter half of the Qianlong reign and the entire last century of the Qing dynasty, the expenses for detention and transfer of prisoners had forced local authorities to either avoid the transfer procedure or sweep up the criminals. Now all these problems emerged in the Qianlong reign, gradually overwhelming the judicial system and forcing the government to take a more efficient approach than under previous emperors.

The problem of lingering imprisonment first emerged during the Kangxi reign. During that time, the emperor continuously imposed benevolent policies, particularly in the decision-making during the Autumn Assizes procedure. Due to his repeated pardons of felony crime convicts, an increasingly long waitlist of unexecuted convicts had emerged since the early years of his reign.³⁶⁰ In order to cater to the emperor, the Nine Ministers even suggested that Kangxi delay all the *lijue* executions.³⁶¹ In 1716, Kangxi insisted that the convicts who were sentenced to deferred execution (*huanjue* 緩決) had “long stayed in the prison and were really pitiful” (*chang xi lingyu, shushu kelian* 長繫囹圄，殊屬可憫). He commanded all the Nine Ministers to check if any convicts had been imprisoned for many years and had a situation that deserved mercy (*kejin* 可矜). If the

³⁶⁰ See, for example, *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 12: 184b–185a; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 82: 1052a–1053b; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 110: 124b; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 126: 338a–338b; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 145: 601a–601b; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 192: 1037b–1038a; *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 120: 218b–219a.

³⁶¹ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 258: 547a.

ministers found such convicts, they should report to the emperor and request a reduced punishment for these criminals.³⁶² Unlike his previous edicts that usually emphasized his benevolent attitude toward prisoners, the aging emperor now realized that his overuse of deferred execution might have caused the convicts to suffer lingering imprisonment. He still resorted to the reduction of punishment instead of facilitating the procedure, but only two years later, he was forced to adopt a more efficient approach. In 1718, Kangxi stated in his imperial edict that,

In the prisons of each province, there are many convicts who are sentenced to deferred execution or wait for a decision on execution that will be made after the autumn. Those who have been sentenced to deferred execution certainly will not be executed. They still have an opportunity to be released in the future. Rather than keeping these convicts long in the jail, it would be better to finalize their cases and cease their imprisonment. All of you should gather with the Nine Ministers to examine the situation and crime of such convicts and decide how to deal with and finalize each case. 各省監禁緩決及秋後處決人犯甚多。已經緩決，斷不至死，將來仍然得釋。與其久禁獄中，不如分別完結為善。爾等會同九卿，將此等人犯，情罪作何分別完結之處。³⁶³

³⁶² Kun, *Da Qing huidian shili*, Xingbu, juan 729, Kangxi 45 nian, vol. 9, 66a.

³⁶³ *Da Qing Shengzu Ren (Kangxi) Huangdi Shilu*, Kangxi, 282: 755a–755b.

Kangxi proposed to facilitate the finalizing of cases (*wanjie* 完結), but this refined approach still could not bring about the reduction of prisoners. Once a case was categorized as deferred execution, the waiting time could be years. The subsequent Yongzheng emperor also argued that Kangxi had frequently deferred some verified (*qingshi* 情實) cases, which by design should never be deferred from execution.³⁶⁴ Unlike his father, Yongzheng exhorted officials to follow the established categories in the Autumn Assizes procedure strictly. In 1723, when Yongzheng became emperor, he abolished the existing policy of reducing punishments during the Summer Assizes (*reshen* 熱審) procedure, which was also considered a lenient policy toward those in jail who suffered from the heat and humidity.³⁶⁵ Two years later, Yongzheng noticed that a number of felony convicts had escaped from the prisons. Instead of reflecting on the prolonged procedure of capital case review, he exhorted governors and local officials to strengthen their control over the management of prisons.³⁶⁶ To some extent, Yongzheng's approach took imprisonment as a crucial element of criminal control. He had condemned heinous crimes in various circumstances. In 1726, he approved a new bill stipulating that criminals who did not commit murder but escaped during detention should be executed on the spot following the laws for murderers.³⁶⁷

In 1729, Yongzheng announced an edict to challenge the ideal of benevolent governance in the practice of imprisonment:

³⁶⁴ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 3: 74a–75a.

³⁶⁵ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 8: 153b–154a.

³⁶⁶ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 37: 551b–552a; *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 62: 956b–957a.

³⁶⁷ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 43: 628b–629a.

Now that these [murderers] have harmed others' lives [they should receive retribution in judicial procedure]. They were lucky enough not to pay with their lives during the Autumn Assizes procedure, how dare they even perceive their illness and disease in the jail as a suffering? ... If we pardon those supposed to be punished in order to win a good reputation [and we are so benevolent that] our prisons are all empty, who could we ever fool? Could we use this to fool Heaven? I actually disdain to do this. Moreover, tolerance in punishment will encourage villainous acts. I am afraid that our pardoning will cause more people to commit crimes. This is what I cannot bear to do. 夫彼既傷人之命，秋決時不即抵償，乃其幸也。而監禁圜，尚以疾病死亡為苦乎？.....但將應行治罪之犯，概從寬釋，以博圜空虛之譽，吾誰欺？欺天乎？朕實恥而不為也。况縱法實足長姦。恐寬宥之後，而犯者愈眾。此更朕所不忍者也。³⁶⁸

Apparently, Yongzheng was reluctant to tolerate felony criminals. Prisons enabled him to hold all the convicts before he made a final decision. Through this tool, he could always manipulate the harshness of punishments while preventing potential criticisms against excessive use of execution. In 1733, two years before his death, Yongzheng noticed that an increased number of capital cases that should not be deferred were categorized as verified. This met his expectations, so he expressed his pleasure in seeing this change. He further argued that judicial officials should sentence convicts to serious punishments and then he, as the final adjudicator, would be in the position to

³⁶⁸ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 83: 105a–106b.

show leniency and reduce the punishment if necessary.³⁶⁹ While he intended to depart from his father's benevolent approach, Yongzheng's strategy of preserving prisoners could hardly help in the problem of lingering imprisonment.

When the Qianlong emperor came to rule the country, population growth and the expansion of the economy had made the entire scenario of capital case review different from the previous one. A large number of felony cases flooded into the judicial system while the number of judicial officials did not adequately change. As Thomas Buoye points out, from 1736 to 1775, the number of manslaughter cases related to lands and debts increased from around 420 to over 1600 per year.³⁷⁰ Sun Jiahong (孫家紅) further suggests that following the 1780s the number of Autumn Assizes cases continuously increased until the end of eighteenth century.³⁷¹ The growing number of capital cases suggests an increasing burden on judicial officials. Not surprisingly, when the emperor only decided a limited number of executions in the annual Autumn Assizes, most of the convicts could only wait in prisons or seek to escape. Throughout the Qianlong reign, the problem of lingering imprisonment remained unresolved. The Qianlong emperor's summary execution reform had hastened the execution of ringleaders, but there were still many accomplices waiting for their final sentences in jail.

The growth of death rows in regional jails increased the cost of both detaining and transferring prisoners. To resolve this problem, the Qianlong emperor could either release the prisoners or, at the other extreme, quicken execution. During the early years of his

³⁶⁹ *Da Qing Shizong Xian (Yongzheng) Huangdi Shilu*, Yongzheng, 136: 740a–740b.

³⁷⁰ Thomas Buoye, *Manslaughter, Markets, and Moral Economy: Violent Disputes over Property Rights in Eighteenth Century China* (Cambridge: Cambridge University Press, 2000), 237–38.

³⁷¹ Sun Jiahong 孫家紅, *Qingdai de sizing jianhou* 清代的死刑監候 (Capital Punishment with Delay in the Qing Dynasty) (Beijing: Shehui kexue wenxian chubanshe, 2007), 332–33.

reign, the Qianlong emperor created his own strategy to handle this difficult issue. In 1739, while receiving reports regarding the accumulated prisoners, the Qianlong emperor argued that it was necessary to clean up the over-occupied prisons. He commanded the Nine Ministers to reduce the punishment of those who had been to the Autumn Assizes more than five times. Most of these criminals committed relatively minor crimes compared to those executed in the same procedure. The Qianlong emperor's approach was to banish these criminals to the remote borders or insalubrious regions. This reduced sentence, he argued, was heavier than the usual approach through the categories of "cases with the probability of receiving mercy" or reduced degree of punishment. On the other hand, it was lighter than "eternal imprisonment" (*yongyuan jianjin* 永遠監禁) as it carried the meaning of cleaning up the longstanding imprisonment (*qingi zhiyu* 清理滯獄).³⁷² Three years later, the Qianlong emperor reiterated the policy of reducing sentences for long-detained prisoners.³⁷³ Unlike the previous lenient approaches, his "cleaning up" solution focused more on deterrence because he tended to place these criminals on the lands of exile—where the government could exploit their labour and execute them through exceptional procedures. In the end, it was the Qianlong emperor's aggressive approach and his reluctance to follow what he called the "circuitous-route-like" (*zhanzhan* 輾轉) review procedure that eventually facilitated the reform of the procedure of prisoner transfer.

To a large extent, the Qianlong emperor's plan of simplifying the prisoner transfer procedure was associated with his reform of the efficiency of the entire judicial system.

³⁷² Jiang and Sun, *Da Qing huidian zeli*, Xingbu, juan 125, 51a–54b.

³⁷³ Kun, *Da Qing huidian shili*, Xingbu, juan 729, Qianlong 7 nian, vol. 9, 68b–69a.

The system he intended to reform contained a wide variety of procedures, including the regional prisoner transfer and even the annual Autumn Assizes. Although many reforms did not directly result in summary execution of convicts, they jointly contributed to a hastened and more regionalized death penalty system in the period after the Qianlong emperor. For example, in the Autumn Assizes procedure, the convicts had received all the reviews before the provincial level. Any sped-up execution at this point was not considered as summary execution, but the emperor's concern over the frequent modifications of sentencing during this procedure—a phenomenon that the Qianlong emperor usually attributed to governors' appeasement of criminals (*guxi* 姑息) and careless review of cases (*caoshuai* 草率)—largely resembled his concern over governors' dealings with the summary executions of wicked people or serious offenders.³⁷⁴ In 1739, having realized that some governors had handed down lighter sentences than expected, the Qianlong emperor exhorted the Guangdong Governor to adjust his lenient approach during the Autumn Assizes procedure.³⁷⁵ Similar critiques appeared almost every year during the Autumn Assizes process, as the throne had been impatient with the frequent modifications between governors and central officials. The Qianlong emperor had been long skeptical of the factuality of regional reports. He always criticized governors for their appeasement. While some governors explicitly denied these critiques, they were always forced to provide further reports to support their arguments. The Qianlong emperor's complaint was not merely part of his style of controlling regional officials. It was also associated with what he called “sticking to the rules,” which appeared not only

³⁷⁴ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 227: 936a–936b.

³⁷⁵ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 110: 525a.

in the cases of wicked people but also in all realms of judicial practice because he perceived that the conventional method of judicial review had failed to respond to the changing social circumstances.

Almost at the time when he established the summary execution law against wicked people, the Qianlong emperor started to simplify the procedure of prisoner transfer. The original review procedure required all convicts in felony cases to be sent from the County Magistrate to the Prefect (*zhifu* 知府), Circuit Intendant (*daoyuan* 道員 or *daotai* 道台), Surveillance Commissioner (*anchashisi* 按察使司), and then to the Provincial Governor. This protracted and circuitous system primarily followed the stratification of administrative units. It delayed the review and enhanced the chances of the prisoner escaping (*jichi shutuo* 稽遲疏脫).³⁷⁶ As a result, the imperial court started to shorten the procedure, particularly when higher-level prisons were close to the place of the offence. In 1738, the imperial court announced a new procedure that sent convicts directly from the county office to the Surveillance Commissioner without transferring them to the Prefect.³⁷⁷ This reform not only aimed to reduce judicial expenditures by shortening the transfer trip but also prevented prisoners from escaping, which was one of the Qianlong emperor's major concerns in judicial reform.

The subsequent reforms further sped-up the procedure of transfer and adjudication. In 1749, when the Qianlong emperor strongly criticized the increasing “old cases of delayed execution,”³⁷⁸ he reduced the number of repeated memorials from three to one.

³⁷⁶ Xue and Huang, eds., *Duli cunyi chongkanben*, juan 49, xinglü 25, duanyü xia, yousi jueqiu dengdi 18, 1246.

³⁷⁷ Ibid.

³⁷⁸ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 350: 834a–836a.

Offenders were no longer detained in the original prison on the date of the final decision. Instead, they were sent to the place of execution five days before the emperor checked the list of final execution.³⁷⁹ Similar reforms occurred in the procedure of delayed execution. In 1750, the Qianlong emperor issued an edict regarding the capital case review in some regions of Guangdong, Gansu, and Fujian Provinces. In this edict, the Qianlong emperor stipulated that once a convict whose offence was subject to delayed execution had completed the adjudication (*ding'an* 定案) procedure, he need not be sent to the provincial government. Instead, he should be detained at the prisons of the Surveillance Commissioner's office.³⁸⁰ To the emperor, the main idea behind these reforms was to prevent prisoner escape and lingering imprisonment during the process. He also intended to shift the place of detention and trial meeting (*huishen* 會審) from one level to another in order to prevent concentration of power or collection of bribes. However, some of the reforms did not work as he expected. During the annual Autumn Assizes meeting, bribery frequently occurred regardless of its location at the provincial government or the Surveillance Commissioner's office.³⁸¹ The Qing court once changed the transfer destination and adjudication location from the provincial government to the Circuit Intendant's office. In 1761, the Qing court changed the meeting location back to the provincial government. Not long after, the court changed its policy again and limited adjudication at the provincial government level to cases that were close to the provincial

³⁷⁹ Zhao Erxun 趙爾巽 et al., Yang Jialuo 楊家駱 ed., *Qing shigao* 清史稿 (The Draft History of the Qing Dynasty) (Taipei: Dingwen, 1981), Zhi, juan 144, 4209.

³⁸⁰ Kun, *Da Qing huidian shili*, Xingbu, juan 844, vol. 9, 1171a–1171b.

³⁸¹ Wei Shumin 魏淑民, *Qingdai Qianlong chao shengji sifa shijian yanjiu* 清代乾隆朝省級司法實踐研究 (Judicial Practice at the Provincial Level in the Qing Dynasty) (Beijing: Zhongguo renmin daxue chubanshe, 2013), 123.

capital.³⁸² In 1767, the emperor finally set a tone for the provincial-level Autumn Assizes meeting. In his new statute, the Qianlong emperor stipulated that all prisoners subject to Autumn Assizes should not be transferred to the provincial government during the adjudication. Instead, they should be detained at the Circuit Intendant's office. The Circuit Intendant was in charge of the adjudication during his circuit inspection in winter (*yi dongji wei qi, xunli suoshu* 以冬季為期，巡歷所屬).³⁸³ The emperor was aware that Circuit Intendant might collect bribes and abuse his power. As a result, in the same statute, he commanded the Provincial Governor to check carefully if the Circuit Intendant was partial to his own subordinates in adjudication.³⁸⁴ Apparently, the Qianlong emperor's arrangement of Governor, Surveillance Commissioner, and Circuit Intendant was not only an attempt to simplify prisoner transfer but also an integral element of imperial control over regional authorities at different levels. The unimpeded communication provided by the Grand Council and secret memorials had enabled him to manipulate the game of power balance. In the practice of judicial review, he also had to divide the power and install checks and balances so that the governors would not abuse the penalty, particularly when the imperial court gradually granted them the power of summary execution in some serious crimes.

In the end, it was such power balance and the long stability of political order that made the Qianlong emperor place summary execution under his strict control. Despite his reforms, the Qianlong emperor did not alter the general structure of centralized judicial review. The adjustment between Governor and Circuit Intendant did not waive the review

³⁸² Xue and Huang, eds., *Duli cunyi chongkanben*, juan 49, xinglü 25, duanyü xia, yousi jueqiu dengdi 17, 1246.

³⁸³ Kun, *Da Qing huidian shili*, Xingbu, juan 844, vol. 9, 1174a–1174b.

³⁸⁴ Kun, *Da Qing huidian shili*, Xingbu, juan 844, vol. 9, 1174a–1174b.

at the central level. Even in the summary execution of wicked people, deserting exiles, and parricides, provincial authorities reviewed the majority of the cases. Some offenders were executed before entering the provincial level, but the emperor required governors to report summary execution cases even if the offenders had been executed. In some cases, the Qianlong emperor commanded officials to keep the offenders without sending them to provincial authorities. His purpose was to prevent criminals escaping and to deter ordinary people at the location of the crimes. For example, roughly after 1760, the Qianlong emperor extended his summary execution laws to offenders who had been involved in trans-provincial robbery and banditry. He was aware that the existing case review procedure—particularly the transfer of prisoners—could not handle the cases involving multiple jurisdictions. He commanded local officials to avoid the transfer and simply execute offenders in the place of detention if the investigation in other provinces had been properly conducted. Regional officials at times found it necessary to transfer criminals for further investigation. In this event, the emperor required them to assign capable soldiers to protect the transfer throughout the process.³⁸⁵

A 1795 case can better explain the Qianlong emperor's idea of deterrence in the shortening of transfer procedure. In this case, the former Fujian Surveillance Commissioner Qian Shouchun (錢受椿) was arrested for his abuse of power and arbitrary killing. The Grand Council officer and Fujian Governor reported the arrest to the throne and started to transfer Qian to Beijing for final investigation. The Qianlong emperor received this report a few days after the transfer had begun. He quickly responded that there was no need to send such a corrupt and brutal official to the capital. He expected

³⁸⁵ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 713: 954a–955a; Kun, *Da Qing huidian shili*, Xingbu, juan 784, vol. 9, 602a–602b.

that the offender would still be in the middle of Zhejiang or somewhere close to Fujian. He commanded officials to send Qian quickly back to Fujian. Then he asked the Governor to squeeze Qian's fingers, beat him one the back with forty heavy bamboo strokes, and then execute him in front of all provincial officers. The Qianlong emperor stated that the punishment should be horrifying and “strike the eyes and rouse the mind of the audience so that anyone who engaged in illegal activities, malpractices, and corruption would take it as a warning and avoid doing the same thing” (俾觸目儆心，以為飭法營私謬妄貪贖者戒).³⁸⁶ This reflected the ideas behind his shortening of capital case transfers, particularly in cases he deemed as deserving no leniency or judicial procedure.

After the Qianlong reign, the over-burdened judicial system continued to be a problem. The imperial court continued to extend summary execution laws, while the general structure of the judicial review system remained except for the bandit suppression during the turbulent Taiping Rebellion. In 1796—the second year of the Jiaqing emperor's reign—the new emperor commanded local authorities to execute coastal bandits and pirates without sending them to Beijing for further review. The imperial court adopted this severe policy in order to prevent any manipulation of local disturbances by the neighbouring Annam and the growing piracy in southeast China. Yet this policy was also to “avoid the troubles of transferring criminals through multiple courier stations” (以省驛站解送之煩) as the so-called “barbarian bandits” (*yifei* 夷匪) contained both

³⁸⁶ *Da Qing Gaozong Chun (Qianlong) Huangdi Shilu*, Qianlong, 1488: 915a–915b.

Annam and Chinese bandits who might seek a chance to escape through the help of local collaborators.³⁸⁷

What was intriguing in subsequent years was how Jiaqing reacted to problems left by the Qianlong emperor rather than inherited the Qianlong emperor's institutions. The rise of pirates in the southeast and the simultaneous White Lotus Rebellion gave the new emperor a chance to promote his own reform—a reform that was not only for the consolidation of his own authority but also a reaction to the problems left by the later developments of the Qianlong reign. In 1799, right after the Qianlong emperor's death, the Jiaqing emperor immediately killed the Qianlong emperor's favourite official Heshen (和珅), citing that the latter failed to suppress the White Lotus Rebellion. Similar to the Qianlong emperor, who relied extensively on the Grand Council, Jiaqing created his own way of resisting against the bureaucrats through a facilitated channel of information collection. The majority of his responses were legal-oriented. Jiaqing promoted the use of capital appeal system and encouraged ordinary people to bring their litigations to the centre. However, it was also this policy that made the already serious judicial backlog problem nearly unresolvable. The corruption of Heshen and the rise of secret societies during the late Qianlong reign strongly impacted local governance and the judicial system. Several governors were compelled to introduce new institutions, such as Adjudicative Bureaus (*fashenju* 發審局), to clean up the backlogs. Jiaqing later acknowledged these governors' reforms and further promoted it in his campaign against judicial backlog. The role of governors gradually became important in this trend. Even though Jiaqing did not

³⁸⁷ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 13: 192b–193a; *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 17: 255a–255b.

intend to use these reforms to clean up delayed executions, the new provincial-centred practices laid a significant foundation for the later regionalization of criminal justice.

In October of 1805, when the imperial troops successfully defeated several branches of the powerful pirate leader Cai Qian (蔡牽), the Jiaqing emperor was also reviewing a report regarding a judicial organ established by the Viceroy of Liangguang, Nayancheng (那彥成). The new institution was called the Bureau of Military Work (*jun Gongju* 軍工局). Cases involving robbery on the rivers or the ocean were all sent to the new Bureau instead of the Surveillance Commissioner, who was in charge of the investigation according to the regular procedure. The Bureau was primarily comprised of military officers. The Viceroy initiated this militarized institution to shorten the judicial review. This matched the ideal of cleaning up the judicial backlog, particularly because the increased threat from pirates had enhanced the worries of the imperial centre. But the Jiaqing emperor was apparently unhappy with the new design. He argued that while the Bureau had helped the Surveillance Commissioner release the voluminous cases, the mixture of military officers and civilian bureaucrats in the regular review procedure had violated the existing institution. He suspected that Nayancheng imitated the model of the Grand Council—an institute where he had previously worked—and usurped his power as a higher-rank regional official. As a result, he commanded Nayancheng to remove the Bureau right away.³⁸⁸

Only one month later, when Nayancheng recruited over three thousand surrendered pirates and sought to accommodate these former villains, the emperor again expressed his disappointment and doubted why Nayancheng recruited them instead of

³⁸⁸ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 151: 1072b–1074b.

suppressing them. Both the imperial court and the regional authorities had observed that the pirates, most of whom had Chinese ancestry or Annam connections, gradually extended from coastal regions to inner rivers.³⁸⁹ The imperial court did not want to recruit these problematic elements. But to Nayancheng, pirates and river bandits drifted from one place to another. According to his previous reports, the number of pirate warships and soldiers outnumbered the imperial navy. It was nearly impossible to rely on standard forces to defeat the growing bandits.³⁹⁰ Nayancheng's analysis and his recruiting approach did not win the heart of the emperor. The Jiaqing emperor transferred Nayancheng to a post at Yili and then Henan, where his policy towards the bandits received continuous criticism from the emperor and officials. However, the emperor gradually realized the limitations of conventional military suppression and the judicial system. The Imperial Commissioner Wu Xiongguang (吳熊光), who then served as the Viceroy of Zhili, also reported the difficulty of suppressing the widespread bandits, particularly in cases where it was hard to distinguish bandits and local militia (*tuanlian* 團練). The rise of secret societies, smugglers, and various types of local actors had become a visible trend since the latter half of the Qianlong period. The Qing court had previously used local militia and braves (*yong* 勇) in the suppression of the White Lotus Rebellion. Now the government had to permit local authorities flexibly to employ—though in a cautious way—all available options in the battles against the “ocean robbers” (*yangdao* 洋盜) and the growing “bandits on the inner rivers” (*neihe daofei* 內河盜匪),

³⁸⁹ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 152: 1094b–1097a.

³⁹⁰ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 137: 868b–870a.

who were closely associated with sectarian activities and smuggling and later became a major power that was known as “fierce smugglers” (*sixiao* 私梟).³⁹¹

In 1811, two years after the Qing court suppressed the major branches of the pirates in Fujian and Guangdong, the imperial court enacted a statute against robbery on inner rivers. By this time, the Qing court had formed a strong organization of local militia in the coastal regions. The new Viceroy of Liangguang, Zhang Bailing (張百齡), trained local militants and commanded patrol vessels—both privately funded and government-funded—to monitor strictly the movement of bandits. However, because of the spread of men using force, including those labelled orthodox or heterodox, the patrol organizations and military forces contained members who had close connections with bandits and sectarian groups. In an 1811 edict to all officials, the Jiaqing emperor criticized the Guangdong authorities and patrol forces for tolerating bandits and even having connections with them.³⁹² In the same year, the court enacted a statute allowing local officials to execute bandits who gathered over forty people and committed robbery on the rivers without prior approval from the court.³⁹³ Three years later, the emperor issued a further edict allowing the Guangdong Governor to conduct the procedure of “respectful request for king’s order in order to carry out immediate

³⁹¹ For studies on southeastern piracy during the Jiaqing reign, see Wensheng Wang, *White Lotus Rebels and South China Pirates: Crisis and Reform in the Qing Empire* (Cambridge: Harvard University Press, 2014); Dian Murray, *Pirates of the South China Coast, 1790–1810* (Stanford: Stanford University Press, 1987); Robert Antony, *Like Froth Floating on the Sea: The World of Pirates and Seafarers in Late Imperial South China Sea* (Berkeley: Institute of East Asian Studies, 2003); Matsuura Akira 松浦章, *Chūgoku no kaizoku 中国の海賊* (The Pirates of China) (Tokyo: Tōhō Shoten, 1995); Matsuura Akira, *Higashi Ajia kaiiki no kaizoku to Ryūkyū 東アジア海域の海賊と琉球* (Piracy and Ryukyū in East Asian Seas) (Ginowan: Yōju Shorin, 2008).

³⁹² *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 245: 312a–313a.

³⁹³ Kun, *Da Qing huidian shili*, Xingbu, juan 784, vol. 9, 604a.

execution” (*gongqing xianxing zhengfa* 恭請王命先行正法) if the location of the case was within three hundred *li* (approximately 6,900 kilometers) of the provincial capital and had no river obstruction in the trip to the latter.³⁹⁴ Distance had become an important factor in the system of summary execution. This was closely related to the rise of bandits and local armed groups—a new class that shaped not only the regionalization of the imperial defence system but also the regionalization of imperial judicial procedure.

The pressing issue of Guangdong banditry revealed how judicial expenditures became a critical issue. The hastened execution based on the distance between incidents and government offices suggested that local authorities were gradually unlikely to afford the costs of patrolling against and transferring convicts. The large number of bandits also made it hard to follow the existing judicial procedure. Local officials had to employ more soldiers and personnel to detain and manage the large crowd of criminals. They might escape from the prison and resume their jobs as bandits or smugglers. Many officials started to think that recruiting these men might be better than the endless chases and captures. In his critiques in 1805, Jiaqing argued that “the original idea of the gathering fund was to patrol against and capture robbers; but now Nayancheng did not use this fund to capture robbers; instead, he used it to reward the robbers” (*chouhua jingfei, yuan wei budao er she; jin Nayancheng bingbu yi zhi budao, er yongyi shangdao* 籌畫經費，原為捕盜而設。今那彥成並不以之捕盜，而用以賞盜).³⁹⁵ Jiaqing apparently knew the difficulty of gathering funds for local governance. He was also aware that the many cases of banditry and robbery had significantly increased the burdens of local government.

³⁹⁴ Kun, *Da Qing huidian shili*, Xingbu, juan 845, vol. 9, 1183a–1183b; Kun, *Da Qing huidian shili*, Xingbu, juan 849, Jiaqing 19 nian, vol. 9, 1220b.

³⁹⁵ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 152: 1094b–1097a.

However, the emperor was suspicious of the various campaigns of local government, including the policies of recruiting bandits and cleaning up judicial backlogs. At this point, he still resorted to the conventional approach of prisoner transfer and even required governors of coastal regions to use their own limited funds for prisoner transfer and to repair the weapons and vessels of naval forces.³⁹⁶

Jiaqing's policy could hardly change the ways of regional authorities. He reiterated the significance of sticking to the established way of prisoner transfer, but the regional authorities always had their own ways to resolve the problem. Roughly the same year that Jiaqing criticized Nayancheng's bandit-recruiting approach, several governors created new bureaus for clearing up accumulated litigations. Many such bureaus were called General Bureau (*zongju* 總局). These institutions centralized the adjudication process within the province while also giving officials the chance to collect bribes and trigger more disputes and litigations following miscarriages of justice. In 1807, the imperial censor Zou Jiaxie (鄒家燮) reported that many county magistrates instructed litigants to file their petitions with the new General Bureau. According to Zou, this policy forced many people to take a long trip to the Bureau and spend significant expenses on transportation and accommodation. Hearing this report, the emperor commanded local governments to avoid using such General Bureaus. He asserted that governors should make full efforts to achieve speedy adjudication. They should follow the regular review procedure and strictly monitor every subordinate throughout the process of adjudication.³⁹⁷

³⁹⁶ Kun, *Da Qing huidian shili*, Bingbu, juan 624, Jiaqing 12 nian, vol. 7, 1088a.

³⁹⁷ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 176: 312a–313a.

Again, Jiaqing's command was unrealistic and unworkable. Central policy did not always match the reality of local governance. This was particularly the case of bandit suppression during the early nineteenth century, when the conventional approach to judicial review gradually failed to work at all in the face of growing cases of banditry and robbery. In 1811, the imperial censor Li Kefan (李可蕃) reported that many Guangdong counties used patrol vessels to monitor river banditry. The officers of the vessels usually required ordinary people to pay an informal fee for the patrols and the capture of bandits. On the other hand, vessel officers also engaged in opium smuggling. They collected money from local people, but they never carefully investigated or prevented banditry and smuggling.³⁹⁸ In 1819, another censor, Jiang Yunkuan (蔣雲寬), reported the problem of insufficient funding in bandit suppression and criminal transfer. The Jiaqing emperor responded,

The complicated and protracted procedure of transferring captured criminals is a real problem in recent days. In the case of sectarian bandits, each time we capture hundreds or at least dozens of bandits. Once these bandits were sent for transfer process, the expenditures of the journey including the meals and accommodation were tremendous. When county magistrates had no sufficient fund to cover the expenses, they would either turn big troubles into smaller ones or charge the petitioners for false accusation. As a result, the sectarian bandits gradually act without any restraint. 至獲犯申解費煩一節，尤係近日實在情形。會匪每破一案，

³⁹⁸ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 245: 312a–313a.

多則百餘人，少亦數十人。一經委提差解，往返程途食用盤費，賠累甚巨。州縣官費無所出，遂一意化大為小，消弭不辦，甚或轉將告發之人坐誣。會匪因此益無忌憚。³⁹⁹

Now Jiaqing finally made a compromise to the reality of the battles against the widespread banditry. He commanded local officials to adopt an expedient approach in the cases of banditry. The ringleaders of these bandit groups should be sent to provincial officers as required in the existing system. The remaining criminals should be detained and adjudicated by county government. As the emperor stated, this approach would help officials to save to a large extent the cost of transfer.⁴⁰⁰ However, simply detaining criminals in one place without executing them still involved large expenses. Bribery occurred at every level of judicial review. Criminals and litigants usually had to pay fees to whoever handled the case or patrolled the region. This was particularly the case because the government did not have sufficient funds for such a vast empire. As long as local officials received insufficient funds from the central government, the problem of bribery remained unresolved, and the local bandit groups would only increase while officials had no funds to maintain the patrol forces.

All these problems eventually urged a thorough reform during the Daoguang reign. In 1827, the Shandong Governor He Changling (賀長齡) reported that the regular judicial review procedure had failed to handle the sharply increased robbery cases. He argued that his province had previously enacted strict punishment against robbery. Over

³⁹⁹ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 358: 720b–722a.

⁴⁰⁰ *Da Qing Renzong Rui (Jiaqing) Huangdi Shilu*, Jiaqing, 358: 720b–722a.

ten thousand robbers were arrested and banished under the new severe punishment, but the number of robbery cases continued to grow. The reason, as He explained, was twofold: the robbers were usually able to escape and then commit crimes elsewhere, and local officials did not try their utmost to capture these robbers. As He further stated,

In each case, local officials spent their own money to hire informants and pay rewards in order to capture the criminals. They then had to cover the expenses of transferring criminals from county to prefecture and province and also the fees of sending them for banishment. These fees ranged from fifty or sixty to over one hundred *liang*. In the regions where the funds for personnel were sufficient, officials could still manage to investigate and capture robbers. In those regions where the funds were insufficient, even if the officials wished to spend efforts on the investigation of robbery, they were unable to deal with these cases. As a result, the chances are that they conceal the cases without reporting them or intentionally loosen their control over robbery. Government clerks who understood such intent of their officials usually tolerated robbers and neglected their duties. This is why the practice of robbery continued and never ceased in society. 地方官每辦一案，自購線緝捕，以至解府、解省、發配，須賠五六十兩至百餘兩不等。其在缺分稍優之州縣，尚可勉力辦理。而瘠苦之缺，即欲

多辦盜案，而力有不能，難保其不諱匿不報，抑或比捕不嚴。捕役窺見本官心意，往往縱犯不拏。此盜風之所以未見稍息也。⁴⁰¹

He Changling's suggestion was to remove the procedure of transferring robbers from local government to the provincial capital. He proposed some informal punishments for preventing criminals from escape, including confinement in chains.⁴⁰² The Daoguang emperor approved his request. As long as the cases did not involve manslaughter, they were allowed to skip the transfer and remain at the jurisdictions lower than the province.⁴⁰³ However, the new policy only applied to Shandong. In other provinces, the problem of the transfer fee remained unresolved. In 1829, the Daoguang emperor heard that the local officials in Jiangsu and Zhejiang did not do their utmost in the capture of pirates and bandits. The main reason behind this was the lack of funds. Many civilian and military officers even tolerated bandits raiding local communities. The emperor thus commanded governors to distribute sufficient money to local governments.⁴⁰⁴ At this point, Daoguang did not want to extend Shandong's policy to the entire nation. The approval was rather on a case-by-case basis, and many governors did not dare to request the same policy because the emperor might blame them for not eradicating crimes in their provinces. Due to their limited funds, some officials left banditry unresolved and left the problem to succeeding officials. For example, in 1830, the Taiwan Prefect, Jiang Yong (蔣鏞), stipulated that the transfer fee for each manslaughter convict should be 30 *yuan*

⁴⁰¹ Zhu Qingqi 祝慶祺 and Bao Shuyun 鮑書芸, *Xing'an huilan* 刑案匯覽 (Conspectus of Penal Cases) (Taipei: Chengwen, 1968 reprint), Xinzeng xing'an huilan, juan 16, 1183–85.

⁴⁰² Zhu and Bao, *Xing'an huilan*, Xinzeng xing'an huilan, juan 16, 1183–85.

⁴⁰³ *Da Qing Xuanzong Cheng (Jiaqing) Huangdi Shilu*, Daoguang, 121: 1035a–1037a.

⁴⁰⁴ *Da Qing Xuanzong Cheng (Jiaqing) Huangdi Shilu*, Daoguang, 154: 364b.

and the fee for each robber was 20 *yuan*. This fee was solely the expense of the Sub-prefecture (*ting* 廳). After the sub-prefectures had covered the fee for years and were unable to afford any further, the subsequent Prefect, Wang Yanqing (王衍慶), allowed the fee to be shared equally by sub-prefecture and county.⁴⁰⁵ Similar cases occurred in many regions of the nation. At this time, summary execution had not been used as a tool to sweep away accumulated and unaffordable prisoners. On some occasions, officers even tolerated bandits after they collected fees from local people.⁴⁰⁶ Ordinary people had to rely on their own forces and the militia in their regions to resist the increased robbery and banditry.

In 1833, six years after Shandong's new policy, Sichuan Province requested to use the same procedure that was applied to Shandong. In Sichuan, the vagrants-turned-bandits had become a real epidemic. When these bandits were captured, they usually withdrew their earlier confession after they were transferred to higher officials. These cases were then returned to lower officials. While the case went back and forth, the convict got the chance to escape punishment. Considering that this phenomenon had disturbed Sichuan and other provinces, the request suggested the court enact a nationwide law against "repeated offenders of banditry and cunning thieves" (*jifei huazei* 積匪猾賊). The emperor approved this request. He enacted a statute stipulating that all robbery cases did not need to be transferred to the Circuit Intendant or Surveillance Commissioner and that they should be detained at the County or Sub-prefecture level

⁴⁰⁵ Lian Heng 連橫, *Taiwan tongshi* 臺灣通史 (A General History of Taiwan) (Taipei: Taiwan yinhang jingji yanjiushi, 1962), juan 12, 283–89.

⁴⁰⁶ Wu Mingshi 吳名世, (*Minguo*) *Zhaoan xianzhi* (民國) 詔安縣志 (Zhaoan County Gazetteer Compiled in Republican Period) (Zhaoan: Zhaoan qingnian yinwu gongsi, 1943), 288–90.

before the final sentences.⁴⁰⁷ In the following years, the central government continued to refine this statute and made it applicable to various situations within the nation.⁴⁰⁸ This legislation played a significant role in the development of the summary execution law. Before the conflict between China and Britain in the late 1830s, the statute became the most severe precedent that extensively authorized local officials to execute convicts without the regular transferring procedure.

The Sino-British conflict was primarily about the trade of opium, a product widely perceived as perilous to Chinese society and economy. The addictive product was introduced to China in the seventh century. In the Qing dynasty, Yongzheng and the subsequent emperors issued bans on the trade of opium. The strict policy was intended to prevent the spread of opium, but the high demand and increased smuggling made the drug prevalent. By the mid-1830s, the import of opium had caused a tremendous loss of silver in China. Many soldiers and literati were addicted to opium. This prompted the imperial centre to take a further step to stop the import. In 1839, after a debate among several officials and the emperor, the imperial court enacted The Imperially Authorized Statute for Prohibiting Opium (*Qinding yanjin yapian yan tiaoli* 欽定嚴禁鴉片煙條例). According to this statute, the ringleader of an opium trading gang should be sentenced to imminent beheading (*zhan lijue* 斬立決), but the regional authorities could conduct the procedure of “respectful request for king’s order in order to carry out immediate execution” without waiting for the review through multiple administrations. The statute also authorized the anti-smuggling forces to capture a large group of salt

⁴⁰⁷ Zhu and Bao, *Xing'an huilan*, Xinzeng xing'an huilan, juan 16, 1192–93.

⁴⁰⁸ Kun, *Da Qing huidian shili*, Xingbu, juan 845, vol. 9, 1184a–1184b.

smugglers and “summarily execute these criminals without any deliberation and exception” (*gesha wulun* 格殺勿論) if the offenders resisted arrest.⁴⁰⁹ In addition to smugglers, the new law also punished officials, clerks, and any person who was involved in the trade or production of opium. Officials who tolerated smuggling, collected bribes, or allowed prisoners or people to take the drug would be punished. The statute listed various kinds of punishment for different behaviours, ranging from bamboo strokes to deduction of salary, to exile and beheading. People who smoked opium would be given one year and six months to quit smoking. After that, officials would check if they continued to smoke. Violators of this kind would be sentenced to strangulation or exile depending on their offences. Officers or soldiers who smoked or introduced others to smoke would be sentenced to more serious punishments than ordinary people.⁴¹⁰

When the Imperial Commissioner Lin Zexu (林則徐) conducted his anti-opium campaign in Guangdong, many smugglers were captured and immediately executed on the spot. Such severe punishment was used to deter Chinese and foreign dealers, but the strict law also brought a large number of prisoners to regional prisons, particularly those who had been addicted to opium. What made things worse was the reward system instituted by the statute. According to the new law, the government would pay a reward to those who captured offenders and sent them to the government. The more serious the offence, the higher the reward the capturers would receive. Local officials who turned offenders over to higher levels of government would also receive funds and

⁴⁰⁹ Qi Sihe 齊思和 and Lin Shuhui 林樹惠 eds., *Zhongguo jindai shi ziliao congkan: yapian zhanzheng* 中國近代史資料叢刊 鴉片戰爭 (Series of reference materials on the history of the modern China: the Opium War), vol. 1 (Beijing: Zhongguo shi xuehui, 1957), 535–60.

⁴¹⁰ Qi and Lin, eds., *Zhongguo jindai shi ziliao congkan: yapian zhanzheng*, vol. 1, 535–60.

grain.⁴¹¹ Such a policy brought a massive flood of offenders to local prisons. In some regions, the county government received thousands of criminals who had been caught engaging in opium-related offences. These criminals were then sent for prisoner transfer at the expense of local governments.⁴¹² While the Qing court was pleased by the number of confiscated smoking instruments and the captured smokers and smugglers, the huge number of criminals also impacted the already overwhelmed judicial system.

The anti-opium campaign eventually led to the humiliating First Opium War. The breakout of war interfered with the operation of adjudication in coastal provinces. For example, in Fujian, the prisoner transfer route to Quanzhou was temporarily shut down. Prisons at the prefecture level then received an incredible number of criminals, including the untransferred ones and the British and Indian soldiers. The war blocked the merchant ships, and the coastal government's tariff was significantly reduced. This made it further difficult to cover the prisoner transfer fee.⁴¹³ The problem continued even after the end of the war. The First Opium War did not make it legal to sell and produce opium within the nation. Nor did it end the large-scale campaign against opium and related crimes. Many governors continued to report their investigation and capturing of local opium crimes. Some local officials could not help but to open one eye while closing the other in the combat against the opium business.

However, the reforms after the Opium War, particularly those led by Lin Zexu, laid the foundation for the subsequent development of summary execution laws. In 1847,

⁴¹¹ Qi and Lin, eds., *Zhongguo jindai shi ziliao congkan: yapian zhanzheng*, vol. 1, 535–60.

⁴¹² Wenqing 文慶 et al., *Chouban yiwu shimo: Daoguang chao 籌辦夷務始末:道光朝* (Complete Records on Managing Foreign Affairs: Daoguang Reign) (Taipei: Wenhai chubanshe, 1966), juan 1, 37–95.

⁴¹³ Lian, *Taiwan tongshi*, juan 12, 283–89.

when Lin served as the Governor-General of Yunnan and Guizhou, he reported the investigation of recent banditry cases and suggested that the court authorize regional authorities to execute summarily these bandits. The court quickly approved Lin's suggestion, stating that bandits with a large group of members could be executed on the spot (*jiudi zhengfa* 就地正法) after they were transferred from the Prefect to the Surveillance Commissioner and fully interrogated by the latter.⁴¹⁴ The following year, the Qing court permitted Yunnan authorities to avoid the judicial review procedure for five years until the military action was complete.⁴¹⁵ Now the shortened prisoner transfer finally reached its height before the Taiping Rebellion. All the previous problems in cases of robbery and banditry, including the overburdened judicial system and the under-resourced local government, came together with the wide spread of bandits and men using force that significantly restructured the Chinese political order and criminal justice system.

Execution on the Spot: Bandit Suppression during the Taiping Rebellion

In March 1853, when the Qing Empire was stuck in the suppression of the Taiping Rebellion, the Xianfeng emperor issued an edict to all governors and officials:

Recently, the Sichuan and Fujian Governors reported their progress in suppressing banditry. Chen Jinshou (陳金綬) also reported the disturbing behaviours of the disbanded militants from Guangdong. I therefore issued

⁴¹⁴ Kun, *Da Qing huidian shili*, Xingbu, juan 850, Daoguang 27 nian, vol. 9, 1229a.

⁴¹⁵ *Da Qing Xuanzong Cheng (Jiaqing) Huangdi Shilu*, Daoguang, 459: 792a.

an edict requiring these governors to suppress the bandits with full force. Once bandits have been captured, governors shall conduct a brief investigation and execute them on the spot. I also ordered local officials, militia, gentry, and ordinary people to execute villains without exception. In the midst of bandit suppression, outlaws from every locality might take advantage of the unrest to rob and disturb civilians. If we fail to take strict measures, how can we restore order and reassure the public? I hereby command all provincial governors, together with their subordinates, to make all attempts to capture the bandits. If they detect any mobs gathering and robbing others, they should interrogate them and execute them on the spot. All these measures are to ensure that justice is served properly to deter further wrongdoing. I also reiterate that all militia, local elites, and ordinary people should join the suppression campaign and execute all villains promptly. Only if we do so will gangsters show restraint and peace be restored. 前據四川、福建等省奏陳緝匪情形，並陳金綬等奏遣散廣東各勇沿途騷擾，先後降旨諭令該督撫等認真拿辦，於訊明後就地正法，並飭地方官及團練、紳民，如遇此等凶徒，隨時拿獲，格殺勿論。現當剿辦逆匪之時，各處土匪難保不乘間糾伙搶劫滋擾，若不嚴行懲辦，何以安戢閭閻。著各直省督撫，一體飭屬隨時查訪，實力緝拿，如有土匪嘯聚成群，肆行搶劫，該地方官於捕獲訊明以後，即行就地正法，以昭炯戒。並飭各屬團練、紳民，合力緝拿，格殺勿論。稗凶

頑皆知斂戢，地方日就義安。至尋常盜案，仍著照例訊辦，毋枉毋
縱。⁴¹⁶

While Xianfeng had previously warranted summary execution for specific regions and banditry cases,⁴¹⁷ this was the first time he had issued a comprehensive command that required all officers and local militia to inflict the death penalty in a thorough manner. Learning from the Jiaqing emperor's suppression of White Lotus rebels, Xianfeng knew that the forces of the militia, *baojia*, and village braves could help the government to expel the bandits. The gradually incompetent imperial troops and the financially embarrassed local government urged the court to collaborate with local forces in its encounter with one of the largest rebellions in Chinese history. Throughout the battles against the Taiping, Xianfeng followed his predecessor's footsteps and eventually facilitated what Philip Kuhn calls the process of "local militarization."⁴¹⁸ In this process, officials of war-raging regions exerted extensive efforts on bandit suppression. Many local battles involved local political struggles where elites and other local actors were actively engaged, while the massive bandit suppression during this period was conveniently labelled as the suppression of Taiping rebels.

Xianfeng's edict was one of the most significant legal and political documents in modern Chinese history. In many respects, this edict was not merely about the Taiping,

⁴¹⁶ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 88: 165a.

⁴¹⁷ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 55: 737a; *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 72: 946b; *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 85: 112a; *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 86: 116b.

⁴¹⁸ Philip A. Kuhn, *Rebellion and Its Enemies in Late Imperial China: Militarization and Social Structure, 1796–1864* (Cambridge: Harvard University Press, 1970).

but rather about a long-term project of mobilizing forces in the hunt for “bandits” in all realms of society. During the rebellion, the devastation of prosperous regions and the expanding Taiping Kingdom, together with its “heterodox” orientation incorporating Christian ideology that frightened the authorities, posed a tremendous challenge to the endangered empire. After the rebellion, when the Qing state intended to restore the old political and social establishments, persecutions continued to prevail in legal procedure and social practice. The rise of provincial and local forces and their lingering effect upon Chinese society and politics suggested that a new order had been established even when the nation was facing the most devastating civil war in its history. In the following century, China witnessed the largest number of summary executions annually in its history. The extensive use of this extraordinary procedure, in conjunction with regular public executions by political regimes, local officials, and militia, had considerable influence on the modern Chinese legal culture.

Among the most significant changes was the expanded power of governors and governors-general. Before the civil war, the Qing emperors had extensively authorized governors and provincial-level authorities to execute bandits and robbers in the cases of robbery, wicked people, deserting exiles, and serious parricide. These hastened punishments were judicially oriented. Even though military officers were allowed to participate in dealing with the cases, particularly those involving robbery, exile, and sometimes wicked people, the procedure still followed a reduced form of reporting procedure. At times, the officials of the Board of Punishment expressed their opinions in the adjudication process, but the majority of these cases were handled by the governors and the emperor. Now, during the Xianfeng reign, when the Taiping Rebellion had

already taken place and challenged the operation of the judicial report system, the execution procedure followed an entirely different mode. The tremendous number of bandits made it difficult to transfer them from one place to another. They could escape or collaborate with imperial soldiers and militia members. As a result, the only secure and efficient way was to kill them on the spot, even in cases when the bandits were captured and investigated by local militia.

More importantly, the new militarized punishment was not only valid in war-raging regions but also used in all provinces where rebel-like behaviours existed. This was not only because of the imperial attitude toward the dangerous rebels but also because of the widespread banditry and robbery that intended to disturb local communities in the name of the Taiping. The epidemic of men who used force made it nearly impossible to distinguish who was a rebel and who a soldier. The imperial court had to make use of local armed groups and place them under the control of governors, who had been tasked with both civilian and military duties since the early half of the Qing dynasty.

While the flood of rebels kept the imperial troops in battle, the fear of bandits also impelled the authorities to clean up the problem of long-detained prisoners. According to previous experience, rebels usually rescued prisoners in order to enrich their forces. In May 1853, two months after Xianfeng's summary execution edict, the Director of the Board of Punishment, Xu Naipu (許乃普), suggested to the throne that felony criminals be executed at the local prisons. The emperor quickly approved his suggestion, stating that bandits usually colluded with prisoners during battles. He particularly commanded the Henan Governor, Lu Yinggu (陸應穀), who was then resisting the approaching rebels,

to execute those convicted of robbery and banditry without sticking to the regular procedure.⁴¹⁹ The following year, the Imperial Envoy, Sengge Rinchen (僧格林沁), suggested that the emperor quickly deal with the prisons where the rebels were approaching. The emperor then commanded local officials to execute the death row inmates immediately in a random place (*suidi zhengfa* 隨地正法) and send out the prisoners sentenced to lighter crimes so that the rebels would not be able to rescue any criminals from the prisons.⁴²⁰

During the time of rebellion, the regular Autumn Assizes could not take place as usual. The emperor then commanded governors of the war-raging areas to execute death row inmates without waiting for their final sentences.⁴²¹ In May 1854, Xianfeng further stipulated that governors should investigate felony cases and execute convicts right after their trials; there was no need to send criminals to the regular judicial review process (*sui shen sui ban, wuyong zhuanjie* 隨審隨辦，無庸轉解).⁴²² Xianfeng's expedient approach loosened the control over local judicial cases. With these edicts, governors could execute any suspect without prior approval. The centre clearly knew that the excessive power of governors might threaten the authority of the court, but during the emergency period, the imperial court had no choice but to extend the power of regional authorities.

The rise of the Xiang Army marked the height of the power of the governors. In 1852, two years after Hong Xiuquan (洪秀全) established his Taiping Heavenly Kingdom, several Hunan elites organized local braves to resist the approaching Taiping

⁴¹⁹ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 95: 341b–343a.

⁴²⁰ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 124: 151b–155a.

⁴²¹ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 125: 193b–196b.

⁴²² *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 129: 294a–296b.

rebels. The then Jiangxi Examination Officer, Zeng Guofan (曾國藩), was in the capital of Hunan, Changsha, serving the mourning period following the death of his mother. He was recommended by local elites and scholar-official Guo Songtao (郭嵩燾) to lead the Hunan braves. He then organized the Xiang Braves (*xiangyong* 湘勇) and successfully resisted the Taiping rebels.⁴²³ Due to the rise of bandits, Zeng adopted an extremely severe policy in judicial practice. He significantly reduced the protracted judicial review procedure. He sent Xiang Braves to capture and punish villains and wicked people. Within only a few days, Zeng expediently executed over two hundred people. Many officials criticized Zeng for the use of cruel punishments. But they saw that Zeng's memorials received appreciation from the imperial court, so they ceased the criticism.⁴²⁴ It was during this urgent time that Zeng's expedient approaches were accepted by the throne. Without support from the emperor, Zeng could not carry out his harsh punishments and militarized institutions.

While the Qing court was still skeptical about this privately organized local troop, it had commanded Zeng to assist his Hunan fellows to organize a militia and villagers to fight the bandits.⁴²⁵ In January 1853, the court further commanded Zeng and the Hunan Governor to supervise the militia jointly to prevent sectarian bandit disturbances.⁴²⁶ The next month, Zeng submitted a memorial entitled the “Memorial on Strictly Suppressing Bandits in Order to Restore Local Order” (*yanban tufei yi jing defang zhe* 嚴辦土匪以靖地方摺). In the memorial, Zeng first claimed that he had used the least costly way to

⁴²³ Zhao, *Qingshigao*, Liezhuan, juan 405, 11907–8.

⁴²⁴ Zhao, *Qingshigao*, Liezhuan, juan 405, 11907–8.

⁴²⁵ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 77: 1019a–1022a.

⁴²⁶ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 81: 1a–3a.

organize the local militia. He argued that the widespread bandits came not only from the Taiping but also from other bandits in the province. These bandits, as Zeng argued, had arisen due to the decades-long problem of local governance. Many officials tolerated those who deserved the death penalty, and they failed to take further action. The robbers and bandits felt no fear of the state's law. As a result, Zeng spent significant effort to capture and punish these bandits, including the religious bandits (*jiaofei* 教匪), robber-bandits (*daofei* 盜匪), sectarian bandits (*huifei* 會匪), and roaming bandits (*youfei* 游匪). Zeng particularly focused on what he called the “roaming bandits,” who had previously served in the imperial troops, Taiping forces, or simply wandered around. He summarily executed them through the respectful request of the king's order (*gongqing* 恭請王命). He even instituted the Bureau of Adjudication (*shen'an ju* 審案局) to quicken the investigation and execution without following the established procedure and legal precedent.⁴²⁷

The emperor quickly expressed his support of Zeng's memorial. In his response, Xianfeng reiterated that “when dealing with bandits, you should use severe punishments so that villains can be thoroughly eradicated” (*banli tufei, bixu congyan, wu qi genzhu jingjin* 辦理土匪，必須從嚴，務期根株淨盡).⁴²⁸ Almost at the same time, Xianfeng issued his comprehensive command regarding summary execution. He apparently supported the use of rough justice. He did not want the regular procedure to be an obstacle to bandit suppression. Only three months later, Zeng reported how efficient his Bureau of Adjudication was. He said his Bureau had beheaded 104 convicts, beaten 2

⁴²⁷ Zeng, *Zuben Zeng Wenzheng gong quanji*, 385.

⁴²⁸ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 87: 145b–146a.

convicts to death, and imprisoned 31 convicts until their deaths. These were the numbers of those captured by provincial authorities. There were far more cases where bandits were captured by county magistrates or prefects. Zeng exhorted these officials that there was no need to transfer these convicts to the provincial government. He asked local officials to execute them summarily. These cases outnumbered those finalized at the provincial level.⁴²⁹ Here, Zeng particularly mentioned the bandits that crossed the boundary between Hunan and Jiangxi. Zeng acknowledged that he was aware that he had no authority to handle bandits beyond the boundary. However, he claimed that he would never let his guard down over the issue. Apparently, Zeng was sounding out whether the emperor was willing to allow him to exceed his jurisdiction to suppress bandits in another province. Yet the Xianfeng emperor simply replied that he understood Zeng's report.⁴³⁰ In the mind of the throne, even during such an urgent time when local troops had to mobilize in a prompt manner, the ultimate authority of commanding troops was still in the hands of the emperor. The officers should not exceed the boundary assigned by the court. Not to mention that Zeng's troop was primarily comprised of his own native folk. It was an important force in the face of rebellion, but it would be a threat to the court if Zeng were able to control military affairs in multiple provinces.

In 1854, when the Taiping rebels defeated many branches of the imperial troops, the imperial court sent Zeng Guofan to assist the military in Hubei. Zeng's Xiang Army successfully defeated several Taiping forces and took back Wuchang from the bandits.

The emperor was so pleased that he quickly appointed Zeng Guofan Governor of Hubei.

However, he was also fearful of Zeng's power, particularly after the Grand Secretariat, Qi

⁴²⁹ Zeng, *Zuben Zeng Wenzheng gong quanji*, 387–88.

⁴³⁰ Zeng, *Zuben Zeng Wenzheng gong quanji*, 387–88.

Junzao (祁寯藻), reminded him that Zeng was able to mobilize over ten thousand men from his native place. The emperor then took back the appointment. Instead, he promoted Zeng to be the Vice Minister of the Board of the Military. Since this post kept Zeng in the central government, he was unable personally to lead his troops. The emperor then switched Sichuan Surveillance Commissioner, Hu Linyi (胡林翼), who was one of Zeng's men from Hunan, to the post of Governor of Hubei. Under the civilian-military division structure, Hu did not have the ultimate power of military command as did the Huguang Governor-General, Guanwen (官文; full name Wangjia Guanwen 王佳官文) did. Hu was clever enough to survive under the emperor's cautious design. His strategy was to establish a friendship with Guanwen and give credit to Guanwen for their reports to the court. As a result, Hu was able to lead the Xiang Army during Zeng's absence. The summary execution laws were still widely practised by many governors, but a trans-regional local army had not come into being because the emperor continued to be skeptical about the loyalty of Zeng and his associated local militia.

In 1857, Zeng finally had an opportunity to leave his post in the central government. Using the reason that his father had passed away, Zeng requested to return to his home county. The imperial court did not grant him sufficient power to lead the Xiang Army. However, when the Taiping attacked the prosperous province of Zhejiang the following year, the Qing court turned to Zeng again because the Jiangnan area was the primary economic base of the entire nation.⁴³¹ Two years later, the imperial army of Jiangnan was defeated by the Taipings. Zeng's Xiang Army became the only force that could resist the rebels. Zeng was granted the power to command all the soldiers standing

⁴³¹ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 255: 953a–954a.

for the Qing court. He continued to use summary execution on and off the battlefields. The Qing court also continuously exhorted Zeng and his collaborating military generals summarily to execute bandits and unruly subjects.⁴³²

Zeng's expressed support for summary execution was largely based on his experience of local governance. During the time of the rebellion, local officials had encountered numerous forces and challenges from both rebels and local powers. On many occasions, the campaigns against the "bandits" involved fierce local political struggles. The use of extreme punishment was a way of maintaining public security, but it was also a way of negotiating local governance with various actors, particularly when local elites had become a visible force with strong political capital and military resources. In the actual practice of summary execution, authorities from different levels and positions adopted different strategies, and execution—or the decision not to execute convicts—was usually a product of fierce debate and manipulation of power that was deeply embedded in the political structure within the bureaucracy and local network.

Here, we can briefly review the stories of a prominent official who served primarily in Zhejiang during the war. This official is Duan Guangqing (段光清, 1798-1878). He was originally based in Anhui and was appointed as a magisterial-rank official in 1844. After that, he was assigned to Zhejiang and served in this province for twenty-two consecutive years. In 1852, following several posts in different counties, Duan was sent to Ningbo to deal with a food riot.⁴³³ It was a time when Ningbo faced rising piracy

⁴³² See, for instance, *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, Xianfeng, 8: 214a–215a.

⁴³³ The following story is primarily based on Duan's autobiography. See Duan Guangqing 段光清, *Jinghu zizhuan nianpu* 鏡湖自撰年譜 (Jinghu's Personal Chronicle) (Tokyo: Kabushiki kaisha daian, 1968), 50–72.

and smuggling. Among others, Yin County produced the largest amount of salt within Ningbo. The county government had recently restricted the trade and imposed a heavy tax on purchases. This enhanced the salt price and triggered a new wave of food riots. Duan was first assigned to Yin County. At that time, the protesting villagers had burned the government office. He did not plan to use military force to suppress the villagers. He met the crowds and persuaded them to file petitions with the government. Local elites heard of Duan's reputation and believed him to be trustworthy. Over 380 petitions from the north, south, east, and west villages flooded to Duan's office within five days. Duan promised to balance the food prices without punishing the rioting villagers.

However, the two officers sent from the provincial level—the Surveillance Commissioner and the Salt Distribution Commissioner (*yanyunshi* 鹽運使)—did not support Duan's solution. Having been previously insulted and even attacked by the villagers, the Surveillance Commissioner, Luo Yong (羅鏞), was particularly upset that Duan did not fiercely suppress the villagers. He sought troops to punish the locals, but the standard troops in the county, which had long observed how the Commissioner bullied the villagers, refused to join the action. Luo then led his own soldiers and braves to search for offenders, but their major target, a *jiansheng*-degree gentryman called Zhou Xiangqian (周祥千), had escaped from the scene. Zhou was the representative of Yin villagers, who had protested against the heavy taxes imposed by the local government. Protesters from the South and West Villages burned and damaged the government office during the demonstration. Zhou then escaped through the help of his fellows from the South Village. Furious about the failure to capture Zhou, Luo and the provincial officers turned to another suspect, Zhang Chaoqing (張潮青). Zhang was a salt merchant. When

the Ningbo Prefect found no suspect to arrest, Zhang became the scapegoat because he traded salt and seemed to have connections with smugglers. Villagers knelt in front of the Prefectural Office and begged him to release Zhang on bail. The Prefect did not respond to the masses, so they robbed the government office and rescued Zhang from jail. A villager called Yu Nenggui (俞能貴), who was Zhang's neighbour from the East Village, generously helped Zhang during the escape. The provincial army then went to the Shishantong (石山衝; literally Rocky Mountain Street) at East Village to search for Zhang and Yu. During the search, the troops raided local communities and arrested thirteen people. The villagers fiercely fought back, so the provincial troops retreated.

Now the Commissioners asked Duan to adjudicate these thirteen people and force them to confess to the crime of rebellion. Duan rejected the command, stating that it was not a proper way to use military forces on this occasion. He further argued that the majority of the sailors were from East Village. Using East Village sailors to suppress East Village was not a proper way of dealing with the current situation. The Commissioners insisted on using force. Several days later, the naval boats were ready to mobilize. At dawn on March 26, the troops sailed out to attack Shishantong. Roughly after breakfast, Duan stepped out of his residence and saw that many shops were closed. Immediately, he was informed that the provincial troops were severely defeated by the East Village army and that the villagers had flooded into the county to capture two Commissioners. Duan wanted to go for a look, but all the government personnel ran away. He then hired a coachman at a high fee and rushed to the Goat Temple at East Village. Some officials had been slaughtered and were lying naked along the river bank. Villagers trusted Duan, so they did not attempt to kill him. They explained to Duan that the officials' troops attacked

them first, and they were forced to fight back. This story apparently differed from what Duan had heard during his trip to the village. Yet the villagers knew that the killing of officials constituted a crime and that there were thirteen villagers currently detained in the government office. Duan promised to protect the detained villagers, but he requested that they pay each deceased officer's family 2,000 coppers. There were over twenty officers and two hundred soldiers killed in this battle. Yu Nenggui joined the battle and killed more than ten soldiers from the government. The villagers still held an officer, Commander Xue, hostage in exchange for the release of the thirteen detained villagers. Duan returned to the office and reported the situation to the two Commissioners. Xue's relatives knelt and begged Duan to rescue Xue. The Commissioners thus agreed to release the thirteen detained villagers. Duan was then able to go to Shishantong to talk about the settlement after the riot.

The negotiation did not go smoothly. The thirteen detained villagers had been tortured in the jail. The East Village people were angry to see their injured fellows. They were particularly hateful of Commander Xue, who led the troops and attacked many innocent men and women. Yu Nenggui threatened to kill Duan at the temple. A gentryman in the village called Li Zhiying (李芝英) came out to save Duan from insult. Li told Duan that they resisted the officials because they had no choice but to do so (*baixing kangguan, chuyu wunai* 百姓抗官，出於無奈). The villagers asked Duan to decide a balanced price of food and confirm the boundaries of the disputed salt lands. Duan refused to make a decision in front of the masses, arguing that the Prefect had adjusted the food prices and the marking of the salt land boundary had been halted by the Governor. Duan argued that he did not carry his official seal, so he would not make any

decision there. The villagers then continued to hold Commander Xue for further negotiation. With Li's help, Duan returned to his place. He told the two Commissioners about the result of his negotiation. Frightened by the villagers' force and strong sentiment, the two Commissioners fled to their base in Shaoxing that same night.

The government and the village then fell into an impasse. One day, Duan received an anonymous letter. In the letter, the author claimed that once Duan decided a proper rate for the grain tax, people would stop their protest and local order would be restored. Before this, Duan had heard about the unfair rate imposed by the Yin government that led to the devastating riot. The levy for the less privileged families was heavier than that for the richer. The poorer households received their invoice in a white envelope (*baifeng* 白封), requiring them to pay over 3,000 coppers in tax for each tael of silver. In contrast, richer families were granted an invoice in a red envelope (*hongfeng* 紅封) and only had to pay 2,000 coppers per tael of silver. This policy was conducted in secret so that only a few people knew about it. The richer households usually had access to the government offices. When they visited officials, government clerks would give them the red envelopes and put their money into it. Lower-class people rarely went to the government offices. They were usually approached by clerks in front of their properties, requiring them to pay the high fee immediately. According to the letter, a proper rate should be 2,600 coppers per tael of silver. The author claimed that once this rate was determined, the protest leader Zhou Xiangqian would have not more grounds for continuing the demonstration. As long as Duan followed his suggestion, Zhou would be isolated by the masses because the dispute would have been settled. The other two suspects, Zhang Chaoqing and Yu Nenggui, would also be isolated in this way.

While highly skeptical about the author's motives, Duan gathered together several members of the local elite and showed the letter to them in front of the City Guard Temple. He was afraid that the people, who were all in privileged households, would disagree with the proposed rate. However, probably because they wished to settle the conflict, they agreed that the new rate was fair. Duan then announced this new rate. In only a few days, Zhou Xiangqian voluntarily surrendered himself to the Prefecture. The Prefect was fearful of the reaction of the masses. He asked Duan to deal with Zhou's surrender. In response, Duan argued that this case should be submitted to the provincial government. He openly praised Zhou for his courage in front of the masses. He then promised Zhou that he would persuade the two Commissioners to punish him lightly. While the masses seemed satisfied with Duan's announcement, Duan began to draft a note to the Commissioners. He suggested that the Commissioners not punish Zhou because the villagers would cease the protest if they found that Zhou was fairly treated. He conveyed to the Commissioners that the crowd would leave and then the real suspects, Zhang and Yu, would have no place to hide.

Almost at the same time, Duan announced the date of the county-level civil service examinations. In the test, he incorporated a question regarding ways to restore local order. The question did not specifically refer to a current incident or heated debate, but the exam candidates were hardly aloof from the recent news about the East Village riot and the fierce battles. One candidate explicitly linked his answers to the ongoing disputes in Yin County. As his answer suggested, the Shishantong villagers were led by a Zhenhai County gentryman who plotted to extend the East Village battles in order to occupy Ningbo, Shaoxing, and then Hangzhou. Rumours suggested that he sent his

confederates to Guangxi to build a connection with Taiping rebels. Duan then quickly contacted Li Zhiying, who had protected him during the riot, and they briefly exchanged their thoughts. Duan promised that the government would not investigate Li's responsibility. In exchange, Li asked Duan to mark the boundaries of that salt lands, suggesting that this would soon settle the dispute. Duan then quickly found one hundred stone pillars and had them installed at the boundaries of the salt lands. Li assisted Duan throughout the process, but then he collapsed on his bed after the construction was complete. Yu Nenggui and Zhang Chaoqing visited him and asked why he was lying down on the bed. Li cried and responded, "Now the salt land boundary is set, and people have resumed their normal life. Who will ever fight against the officials with me?" This was at the same night that the Zhenhai gentryman fled back to his hometown.

Duan did not completely stand on the side of the local government. When he came to assist the incompetent officials, he was not fully respected by the provincial officers. Initially assigned to clear up a messy situation caused by the previous Yin Magistrate, Feng Yi (馮翊), Duan fully understood what Li Zhiying meant when he said that their resistance was all because "they had no choice." In his brief conversation with Zhou Xiangqian, Duan had learned the hardship of villagers under Feng's rule. He lamented that Feng's unfair policy had harmed the interests of people in the lower class. He also heard that Feng granted his clerks excessive authority to collect fees and arbitrarily capture innocent people. However, Duan also knew that the brutal attack on the officers and the burning of government offices should not be tolerated. Many of his Yin government colleagues were killed in the battle. Even though many villagers were unfairly treated by the government, someone should be responsible for the serious crime

and casualties. Fortunately for the villagers, both Duan and the higher authorities wished to punish only a few ringleaders without punishing the entire village. Zhou was tragic indeed as his fellows abandoned him after the uprising. Zhang and Yu would be next as no one wished to continue the riot if the government had settled the disputes. This is the way local people approached their disputes. They could be easily mobilized to fight against local authorities, but they might quickly compromise if the circumstances turned out to be favourable to them.

The Commissioners were previously disrespectful to Duan, but this time they followed Duan's suggestions. After Zhou arrived in Shaoxing, they treated him very well with good food and accommodations. They were frightened by the defeat in the East Village, and they knew Duan was an experienced official who usually had good strategies for handling urgent situations. Now Duan had comforted the villagers and forced Zhou to surrender. It was time for him to deal with Zhang and Yu. Duan first conducted psychological warfare—he made officials and villagers believe that he did not care about the issue anymore. Then he sent his subordinates to pry for information at Shishantong and found that Zhang and Yu's followers were reduced to around ten people. Duan thus posted wanted posters, promising that villagers would not be punished as long as Zhang and Yu were captured. He offered 800 foreign yang (洋) to any persons who arrested the suspects.

At the same time, Duan heard that the Governor-General of Fujian and Zhejiang intended to post an announcement about the potential military suppression for the East Village incident. The Brigade Commander (youji 游擊), Zhang Conglong (張從龍), told Duan that the Governor-General also preferred dismissal of the masses to military

suppression. Duan then persuaded him to hold the announcement without posting it around the county. The villagers heard about this. Many appreciated Duan as “Duan Qingtian” (段青天), suggesting that he could uphold justice and cope with the incident in a proper way. Families of the East Village then reached an agreement: they would capture Zhang and Yu and send them to the government. Zhang and Yu quickly fled during the night. Zhang was found in a river. Villagers turned him over to the government. Yu fled far away from the county. Some villagers then turned to arrest Yu’s relatives. Instead of persecuting Yu’s family, Duan asserted he only wanted to capture the leading offenders and would not grant any reward for the arrest of the suspect’s family. Immediately, rumours spread that Yu had appeared in Fenghua County. Duan asked the Prefect to capture Yu and detain him in a wooden cage. Both Yu and Zhang were sent to the provincial government and quickly executed. The usual procedure of summary execution required local officials to hang up the heads of offenders in their native place. But the East Village people requested Duan not to do so because they would be sad to see the severed heads of their fellow villagers. Duan agreed not to hang the heads. The Yin County riot now came to an end.

To a great extent, Duan’s strategy for handling bandit suppression was not uncommon during the Taiping Rebellion. Many local groups engaged in fierce combat against their opponents and even the government. Some of them triggered serious battles and even used the name of Taiping rebels—a double-edged sword that could strengthen their legitimacy and also bring destruction upon their forces. Local officials had to manipulate these situations cleverly and settle the conflicts in an acceptable way.

On many occasions, summary execution was not only a response to the increasing banditry and riots. It was also a product of the complex dynamics and interactions among different local actors and authorities. Duan's experience in Yin County can be understood in a broader context of local governance during and after the Taiping era. While food riots—an increasingly common thing since the mid-eighteenth century—were certainly a major factor behind this incident, the highly fluid and negotiating relations between officials and local people, the shifting alliances and rivalries between local actors, and the gradually militarized local organizations all made the use of summary execution a significant option through which officials and the negotiating parties manipulated their relations throughout the changing local dynamics. In the following years, Duan continued to develop his own strategies for handling bandits, roaming braves, and rioters in local society. The story of bandit suppression did not end following the defeat of the Taipings. It continued to prevail across the nation particularly because the regional government relied extensively on expedient measures, and the wide spread appearance of “bandits”—including those involved in the heterodox activities that were not allowed by the authorities—continued to force both government and local elites to organize themselves in a militarized way.

Guideline, Substatutes, and More: Summary Execution after the Civil War

While the Qing court relied on summary execution in the battles against the Taiping rebels and emerging armed forces, the extensive use of this exceptional institution also posed a number of new threats to the Qing state. During the Ming and Qing Dynasties, Chinese criminal justice had reached a height of centralization. Capital

cases were required to go through multiple levels of review, including the final sanction by the monarch. This centralized system secured the emperor's power of killing and prevented abuse of power at the local level.⁴³⁴ During the Taiping Rebellion, the rising power of governors largely changed the existing judicial system. The Xianfeng emperor's policy allowed the governors to avoid the regular distinction between bandit leaders and followers and to execute all convicts without exception.⁴³⁵ The imperial court even allowed governors to impose taxes for the supply of their armies, enhancing the power and financial independence of each province.⁴³⁶ During the latter half of the Taiping Rebellion, the Xianfeng emperor further extended indiscriminate execution to cases of robbery, smuggling, resisting arrest, and counterfeiting coins.⁴³⁷ While the exact number of executions remains unknown, thousands of ordinary people were reportedly killed annually in war-ravaged regions.⁴³⁸ Many officials urged the throne to punish governors who disregarded human lives "like playing with toys," but the throne prioritized urgency while admitting that the punishment of officials might only agitate other officials and trigger a new crisis rather than resolving the problem.⁴³⁹

⁴³⁴ Na Silu, *Qingdai zhongyang sifa shenpan zhidu* 清代中央司法審判制度 (System of Justice at the Highest Level in Qing China) (Taipei: Wenshizhe chubanshe, 1992), 193–294.

⁴³⁵ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 159: 747a–747b; *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 218: 412b–414a; *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 283: 146a–146b.

⁴³⁶ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 121: 89b–90a.

⁴³⁷ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 230: 582a.

⁴³⁸ Kun, *Da Qing huidian shili*, Xingbu, juan 850, Guangxu 7 nian, vol. 9, 1231b–1232b; Zhao, *Qingshigao*, Liezhuan, juan 405, 11907–11908; Zhongguo diyi lishi dang'an guan 中國第一歷史檔案館, ed., *Qing zhengfu zhenya taiping tianguo dang'an shiliao* 清政府鎮壓太平天國檔案史料 (Archival Materials on the Qing Government's Suppression of the Taiping Heavenly Kingdom) (Beijing: Guangming ribao chubanshe, 1990), vol. 2, 441.

⁴³⁹ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 135: 177a–177b.

During the late 1860s, when the Qing defeated the major forces of the Taiping and Nian rebels, initial reforms attempted to abolish summary execution. In 1869, the Tongzhi court issued an edict stating that the previous summary execution laws were expedient and merely temporary measures. However, while the court required all judicial officers to resume the regular judicial reporting procedure, it permitted the regions involved in the war to continue to use the militarized procedure.⁴⁴⁰ Even such a compromise approach did not gain support from the majority of the governors. As the Board of Punishment later admitted, it was difficult to abolish summary execution because even after the war regional governments still relied on it to suppress theft and robbery.⁴⁴¹ In order to keep summary execution as an exceptional practice, the Qing court only granted each province a few years to carry out summary execution. Nevertheless, many governors continued to request extensions, and the Qing court, while fully aware that harsh laws could help secure its rule, continued to extend the laws of each province.⁴⁴²

To a certain extent, the continued renewal of summary execution laws reflected the imperial strategy over the power of killing. By keeping the regular statutes unchanged, the imperial court retained its discursive tradition of “circumspection in punishment” (*shen xing* 慎刑) while allowing its subordinates extensive power to kill on its behalf people who were potential threats. The governors had to defend the need for using such

⁴⁴⁰ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 253: 523a–523b.

⁴⁴¹ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 84: 746b–747a.

⁴⁴² Zhu Shoupeng 朱壽朋, ed., *Donghua xulu (Guangxu chao)* 東華續錄 (光緒朝) (Continuation of the Donghua Records: Guangxu Reign) (Shanghai: Shanghai jicheng tushu gongsi, 1909), 51–52, 55–56; Li Hongzhang 李鴻章, *Li Hongzhang quanji* 李鴻章全集 (Complete Works of Li Hongzhang) (Changchun: Shidai wenyi chubanshe, 1998), 1671.

punishments, and they would be criticized if they failed to use their power properly. The renewed policies required governors to submit reports periodically, securing the imperial control over summary execution.⁴⁴³

In 1878, for instance, Zhejiang governor, Mei Qizhao (梅啟照), reported a robbery case in which nine robbers mobbed a government office and caused the death of a government staff member. The Board of Punishment quickly cited the policy of summary execution and suggested that the governor execute the robbers on the spot. Mei may have expected the suggestion. The Qing court had recently denounced him for ignoring local robbery cases,⁴⁴⁴ so he probably used the robbery case to demonstrate that he had handled this one more seriously.⁴⁴⁵ Any local upheaval could make him lose his position, and he had to demonstrate his competence. In this regard, the extension of a governor's power did not necessarily negate monarchical power, although the limited resources provided by the centre, together with the intensified turmoil that challenged imperial authority, eventually forced governors to rely on their own resources to survive.

In 1879, the imperial court approved a guideline (*zhangcheng* 章程) drafted by the Board of Punishment stipulating that summary execution only applied to cases where bandits and robbers were captured far from the provincial capital. In such cases, prefectural authorities could execute suspects without sending them to the province, but a post-execution report with an interrogation record should be submitted for further

⁴⁴³ Suzuki Hidemitsu, “Shinmatsu shūchi seihō kō” 清末就地正法考 (A Study on Late Qing Summary Execution Procedure), *Tōyō bunka kankyūjō kiyō* 東洋文化研究所紀要 (The Memoirs of the Institute of Oriental Culture) 145 (2004): 35–38.

⁴⁴⁴ *Da Qing Dezong Jing (Guangxu) Huangdi Shilu*, 60: 831b.

⁴⁴⁵ Zhu and Bao, *Xing'an huilan*, Xinzeng xing'an huilan, juan 5, 4919.

supervision.⁴⁴⁶ The guideline represented an official response to the debates on the legitimacy of summary execution. Instead of restricting the use of summary execution, the guideline reinforced the institution. Moreover, the guideline implied that local magistrates encountered difficulties in both prison management and the conveyance of prisoners, a problem that had begun to be visible in local judicial administration over a century earlier.

The financial constraints on the practice of criminal justice surfaced in the mid-eighteenth century when the empire underwent a tremendous population increase and economic growth. The local officials, while given only limited resources under what Philip Huang terms “centralized minimalism,”⁴⁴⁷ encountered mounting difficulties in handling the increased judicial backlog. A wide range of informal and flexible measures was thus created in the local operation of judicial administration.⁴⁴⁸ The issue remained unresolved during the nineteenth century, and the Daoguang emperor criticized Zhejiang and Jiangsu officials for ignoring piracy and banditry due to the lack of funds for conveying criminals.⁴⁴⁹ It was also during the Daoguang reign that the government explicitly legitimized the use of summary execution for reasons of finance and prison management. In 1848, Commissioner Lin Zexu (林則徐) defended the practice of summary execution on the grounds that conveyance was costly and dangerous because the prisoners usually took this chance to escape and sometimes a prisoner’s companions

⁴⁴⁶ Kun, *Da Qing huidian shili*, Xingbu, juan 850, Guangxu 7 nian, vol. 9, 1231b–1232b.

⁴⁴⁷ Philip Huang, *Chinese Civil Justice, Past and Present* (New York: Rowman & Littlefield, 2009), 13–17.

⁴⁴⁸ Suzuki Hidemitsu, “Zhangbi kao”; Suzuki Hidemitsu, “Cong danxin dang’an kan qingchao houqi xingshi shenpan zhidu de yiban”; Thomas Buoye, “Death or Detainment.”

⁴⁴⁹ *Da Qing Xuanzong Cheng (Daoguang) Huangdi Shilu*, 150: 297b–298a.

would rescue him during the conveyance.⁴⁵⁰ During the latter half of the nineteenth century, several famous governors-general, including Zeng Guofan (曾國藩) and Li Hongzhang (李鴻章), provided similar reasons for the continuation of summary execution.⁴⁵¹ Due to the prevailing support for summary execution, the imperial centre had little room for removing it. In an imperial edict issued in 1898, the court condemned local officials for seeking convenient and expedient approaches, while admitting that the scant regard for human lives was unavoidable given the problems in judicial practice.⁴⁵²

Moreover, while the civil war intensified local political struggles, the existing problem of “judicial backlog” (*ji'an* 積案) worsened following the fall of the Taiping Heavenly Kingdom. Endless disputations emerged between competing groups that had fought during the lingering civil war. The disbanded fighters also became a new social problem, causing severe robbery and banditry across the nation. Roughly after the late 1860s, the increasing number of crimes and litigations forced several governors to start a new “cleaning up judicial backlog” campaign (*qingsong* 清訟). After some governors successfully “cleaned up” accumulated judicial cases, the Qing court publicly praised them and encouraged other provinces to follow their example.

Zeng Guofan’s *Ten Regulations on Cleaning Up Judicial Backlog in Zhili* (*Zhili qingsong shiyi shitiao* 直隸清訟事宜十條, published in 1869) was one of the earliest official publications on this issue. The regulations encompassed a wide range of dimensions, including robbery and banditry cases (Article 7). Zeng stipulated that his subordinates should divide robbery and banditry cases into two categories: one involving

⁴⁵⁰ *Da Qing Xuanzong Cheng (Daoguang) Huangdi Shilu*, 459: 792a–792b.

⁴⁵¹ Zeng, *Zuben Zeng Wenzheng gong quanji*, 1813–1819; *Shen Bao* 3143, January 28, 1882, 3–4.

⁴⁵² Liu, *Qingchao xu wenxian tongkao*, 9880b.

lesser severity and less stolen money, and the other of greater severity and more stolen money. Prosecution of the former followed the regular reporting procedure, whereas the latter had to be reported to Zeng for his consideration of the application of military judicial procedure (*junfa congshi* 軍法從事), a synonym for summary execution. The reason to resort to summary execution, according to Zeng, was to “threaten the bandits and take away their courage.”⁴⁵³ Moreover, as Zeng repeatedly emphasized, any delay in the suppression of banditry would allow these villains to “remain out of the law’s reach and never fear the law.”⁴⁵⁴

Despite the support from the imperial court, the campaign to clean up judicial backlog was primarily a regional matter. Given the limited funds from the central government and the accumulating judicial cases, the provincial authorities had to clean up these cases by themselves. After the Zhili regulations, several provinces imitated Zeng’s model of “cleaning up cases.” Zhejiang Province, for example, issued a *Guideline on Cleaning Up Judicial Backlog* (*Zhejaing qingsong zhangcheng* 浙江清訟章程, published in 1878), reiterating that it was the officials’ responsibility to sweep away crimes and accumulating litigations. One of the precedents cited a Taizhou case involving summary execution for the offence of robbery at sea. The interpretation following the case warned local officials and yamen runners to capture all felony criminals and punish them in a prompt manner.⁴⁵⁵ Like Zhili’s and other provinces’ regulations, Zhejiang’s guideline suggested that the regional government had routinized the practice of summary

⁴⁵³ Zeng, *Zuben Zeng Wenzheng gong quanji*, 1817.

⁴⁵⁴ Zeng, *Zuben Zeng Wenzheng gong quanji*, 1817.

⁴⁵⁵ *Zhejiang qing song zhang cheng* 浙江清訟章程 (Guideline on Cleaning Up the Judicial Backlog), publisher unknown, 1878, rare book, call number 4896 3330, stored at Harvard Depository, Harvard University.

execution in an attempt to deter outlaws and to clean up accumulated cases. In addition, through the promotion of “cleaning up judicial backlog,” the provincial authorities summarily finalized a number of felony cases without reporting them for further review.

The extension of summary execution continued after the Qing initiated its judicial reforms under the name of “New Policies” (*xinzheng* 新政). Under pressure from the public following the Boxer Protocol of 1901, the Qing court appointed a number of reforming officials to revise imperial laws. In 1905, the imperial court abolished a set of cruel punishments, including death by slow slicing, display of the severed head (*xiaoshou* 梟首), and mutilation of remains (*lushi* 戮屍).⁴⁵⁶ At roughly the same time, the Board of Punishment rejected a suggestion to extend summary execution to government clerks and doormen.⁴⁵⁷ On the surface, the Qing government intended to be benevolent in the use of the death penalty. However, the Qing court would not abolish summary execution because it had become the only useful instrument in bandit suppression after the abolition of cruel punishments.⁴⁵⁸

To the reforming officials, the largest problem of summary execution came from its erosion of the emperor’s power and the combination of legal and military powers. In 1906, the Bureau of Government Organization (*Bianzhiju* 編制局) suggested the introduction of a Western system of separation of powers. It also suggested that the “issue of military power” (*junquan wenti* 軍權問題) should not be confused with the

⁴⁵⁶ For an analysis of this reform and its cultural and political backgrounds in a comparative perspective, see Brook, Bourgon, & Blue, *Death by a Thousand Cuts*, 2008.

⁴⁵⁷ Zhu, *Donghua xulu* (*Guangxu chao*), 5028–29.

⁴⁵⁸ In 1908, Henan Governor Lin Shaonian (林紹年) also pointed out the important role of summary execution after the abolition of cruel punishments. See *Zhengzhi guanbao*, no. 172, March 21, 1908, 7–8.

“issue of legal power” (*faquan wenti* 法權問題), claiming that “the power of killing should belong to the emperor.”⁴⁵⁹ This suggestion faced strong criticism from the governors-general,⁴⁶⁰ And yet the imperial court continued to regard the law as an indispensable part of its centralization program. The opposition of the governors-general demonstrated that a unified punishment system could not penetrate to the lower level of the imperial bureaucracy. The court had first to consolidate its own military and punishment systems in order to ask its subordinates to follow the rules and supervision of the central government. In August 1908, the newly established Army Ministry (*Lujun Bu* 陸軍部) announced four supplementary provisions, most of which concerned summary execution. The provisions extended the scope of military law from military affairs to ordinary offences. It also strengthened the legal grounds of the administrative officials’s power of capital punishment.⁴⁶¹

In the last four years of the dynasty, the imperial centre enacted a series of new laws introducing Western institutions. District courts were gradually established in some regions. The new court and prosecution system quickly caused dissatisfaction among local officials. The administrative officials could not imagine having to send criminals to court after arresting them. Some provinces even started to prohibit summary executions because of the new system of separation of executive and judicial powers.⁴⁶² The Qing court expected judicial and military centralization, but its measures created uncertainty and extra costs for local governments. The battles between administrative and judicial

⁴⁵⁹ *Shen Bao* 12201, April 11, 1907, 2–3.

⁴⁶⁰ Yuan Shuyi 苑書義 ed., *Zhang Zhidong quanji* 張之洞全集 (Complete Works of Zhang Zhidong), vol. 11 (Shijiazhuang, Hebei renmin chubanshe, 1998), 9563.

⁴⁶¹ *Shen Bao* 12776, August 26, 1908, 4; *Shen Bao* 12963, March 9, 1909, 4.

⁴⁶² *Shen Bao* 13747, May 19, 1911, 11.

officials over the power of summary execution continued to increase. The reforming officials frequently condemned summary execution for its harmful effect upon “judicial independence.”⁴⁶³ Yet many local officials rejected sending summary execution cases to the district courts.⁴⁶⁴ Some governors even argued that as “the quality of the Chinese people was extremely uneven,” it was necessary to perform summary executions to manage those unqualified people.⁴⁶⁵

Actually, the establishment of new courts achieved only part of the imperial centre’s goal of centralization. The new courts extended the state’s law to the local bureaucracy and gradually removed part of the local officials’s power over capital punishment. However, it did not help local governments gain more strength to cope with the growing upheavals and revolution. The imperial centre expected that the courts and laws could help it manage local officials and society, but the continuous problem of banditry and revolutionary uprisings made the imperial court complain that, “while the court frequently issued imperial edicts about judicial reform, the country still had no people who wished to abide by law.”⁴⁶⁶ However, another project of the court, strengthening the military and the unification of military justice, had succeeded to a certain extent. This project even resolved the conflict between administrative and judicial branches because the Ministry and governors-general discovered that once the power of summary execution belonged to military justice, the problem of “the administration’s

⁴⁶³ *Shen Bao*_13766, June 7, 1911, 6; *Shen Bao*_13772, June 12, 1911, 6.

⁴⁶⁴ *Shen Bao*_13780, June 20, 1911, 12; *Shen Bao*_13747, May 19, 1911, 11.

⁴⁶⁵ *Xuantong zhengji* 宣統政紀 (Political Records of the Xuantong Reign), in *Da Qing lichao shilu*, 47: 854b–856a.

⁴⁶⁶ *Xuantong zhengji*, in *Da Qing lichao shilu*, 62: 1151a–1152a.

intervention into judicial practices” would be resolved.⁴⁶⁷ This relocation finally resolved the problem of the ambiguous role of summary execution in the preceding half century. Although the reconsolidation of summary execution through the establishment of military justice was not able to save the falling dynasty, it continued to play an important role in criminal justice and influenced the interplay between law and politics during the Republican era.

Conclusion

The regionalization of summary execution was initially a product of long prosperity and expansion and then an active response to the overwhelmed judicial system. The analysis in this chapter shows how this process evolved throughout the long century in different realms of punishment and under the rule of different emperors. The large-scale regionalization of summary execution first occurred in the Daoguang reign and then became completely established during the Taiping Rebellion. This long process largely extended the military and judicial power of governors and gave rise to the locally organized militia. The expansion of these two eventually shaped the world of local governance during the last decades of the Qing dynasty and shaped the Republican era local society even after the introduction of Western laws.

⁴⁶⁷ *Shen Bao* 13602, December 18, 1910, 4; *Shen Bao* 13622, January 7, 1911, 10–11; *Shen Bao* 13633, January 18, 1911, 5; *Shen Bao*_13663, February 23, 1911, 11; *Shen Bao*_13679, March 11, 1911, 11; *Shen Bao*_13708, April 10, 1911, 3–4; *Xuantong zhengji*, in *Da Qing lichao shilu*, 38: 679a–679b.

Chapter 4: The Economy of Punishment: Battles against “Roaming Braves”

[The authorities] called them ‘roaming braves’ because they intended to kill them and thus gave them such a name....What does it mean by ‘roaming braves’? They were disbanded soldiers when our country had no warfare. These people turned from ordinary people to braves, and then turned from braves to wanderers. This is all because of the state’s policies. 謂之游勇而殺之，先有欲殺之實，而後加游勇之名。.....游勇者何？國家無事，所遣散當時募集之兵也。故其由民而變為勇，由勇而變為游，皆國家由以致之。 – *Zhongwai ribao*.⁴⁶⁸

In the summer of 1864, the Qing general Zeng Guofan submitted an imperial memorial requesting the court to dissolve his Xiang Army.⁴⁶⁹ The army had just defeated the Taiping rebels and recovered the city of Nanjing. Over a decade of fighting, the military had reached over 120,000 soldiers at this point.⁴⁷⁰ The large army carried heavy expenditures. Many militants were underpaid and riots occasionally broke out.⁴⁷¹ The limited supplies from the court even made the underpaid soldiers to engage in smuggling business or join the banditry groups. What further annoyed Zeng was the suspicion

⁴⁶⁸ This paragraph first appeared on the *Chinese and Foreign Daily (Zhongwai ribao 中外日報)*. It was reposted by the *Eastern Miscellany (Dongfang Zazhi 東方雜誌)*. See *Dongfang Zazhi* 2:3 (1905), 66-68.

⁴⁶⁹ Zeng Guofan 曾國藩, *Zuben Zeng Wenzheng gong quanji 足本曾文正公全集* (The Unexpurgated Complete Works of Zeng Guofan) (Changchun: Jilin renmin chubanshe, 1995), 1021-22.

⁴⁷⁰ Xue Fucheng 薛福成, *Xue Fucheng xuanji 薛福成選集* (Selected Works of Xue Fucheng) (Shanghai: Shanghai renmin chubanshe, 1987), 304-307.

⁴⁷¹ For example, only three years earlier several soldiers in the troops of Hu Linyi (胡林翼) had rioted, carrying swords and requesting wages. The commander quickly executed the rioters. Hu Linyi 胡林翼, *Hu Linyi ji 胡林翼集* (Collected Works of Hu Linyi) (Changsha: Yuelu shushe, 1999), vol. 1, 834.

regarding his loyalty.⁴⁷² By the end of the Taiping Rebellion, he had become the most powerful official in the nation. No one could ever contend with his military power. Even the court was wondering if he would reduce his power by himself.

While the financial constraint and political conspiracy seemed to have overwhelmed Zeng's mind, the diverse background and the potential criminal tendency of his soldiers constituted another critical issue that may destroy his career during the restoration period. Initially based in Hunan Province, Zeng recruited a wide variety of braves from different places during the process of suppression. The soldiers included local bullies, secret society members, smugglers, and surrendered rebels.⁴⁷³ While the Qing authorities strategically used these men in the battles against local revolts, these men also had their own ways of surviving the harsh circumstances.⁴⁷⁴ As Elizabeth Perry points out, peasants and marginalized groups developed two models of survival during the nineteenth century: one was a predatory strategy, including theft, smuggling, banditry, and organized feud, while another was a protective strategy against predatory behaviour.⁴⁷⁵ The two models were closely associated with natural restrictions, but they were also shaped by social structures and political actions, including the suppression of

⁴⁷² Luo Ergan, *Luo Ergan quanji* 羅爾綱全集 (Complete Works of Luo Ergan) (Shanghai: Shehui kexue wenxian chubanshe, 2011), vol. 14, 158-66.

⁴⁷³ Liu Cheng-Yun 劉錚雲, "Xiangjun yu gelaohui" 湘軍與哥老會 (The Xiang Army and the Gelaohui), in Zhongyanyuan jinshisuo 中研院近史所 ed., *Jindai Zhongguo quyushi yantaohui lunwenji (shang)* 近代中國區域史研討會論文集 (上) (Essays from the Conference on Regional Modernisation in Modern China [Vol. One]) (Taipei: Zhongyanyuan jinshisuo: 1986), 389-400.

⁴⁷⁴ For recent studies on how ordinary people dealt with life and atrocities during the Taiping civil war, see Tobie Meyer-Fong, *What Remains: Coming to Terms with Civil War in 19th Century China* (Stanford University Press, Stanford, 2013); Chuck Wooldridge, *City of Virtues: Nanjing in an Age of Utopian Visions* (Seattle: University of Washington Press, 2015).

⁴⁷⁵ See Elizabeth J. Perry, *Rebels and Revolutionaries in North China, 1845-1945* (Stanford: Stanford University Press, 1980), 3, 6.

the state.⁴⁷⁶ In 1859, Zeng enacted a regulation for his army, empowering his subordinate commanders to summarily execute any soldier with a connection to secret societies, particularly those conveniently labelled as Gelaohui (哥老會; literally “gathering of brothers and elders”).⁴⁷⁷ These strict laws did not stop illicit activities. Many soldiers continuously engaged in robbery and smuggling. Some escaped from the army and joined the enemies or bandit groups. Frequent changes of identities made it difficult to distinguish a friend from foe. Zeng could only dissolve these soldiers and select what he need for future defense.

The dissolution of the Xiang Army created a large flood of “roaming braves” (*youyong* 游勇). Zeng kept only a few braves and reassigned them to his new navy troops, the Yangtze Navy Brigade (*Changjiang shuishi* 長江水師). He retained part of Zuo Zongtang’s (左宗棠) troops and Li Hongzhang’s (李鴻章) Huai branch. The latter became the main force in the suppression of the Nian Rebellion, and then was largely disbanded after the war.⁴⁷⁸ Many roaming braves were afraid of being captured by the government. Some started to beg and swindle in the street and hide in the mountains.⁴⁷⁹ Even if local officials provided land cultivation jobs for them, many braves with military rank were unwilling to accept such a degrading and humiliating arrangement.⁴⁸⁰ As a result, a large crowd of roaming braves strayed on the street and disturbed local

⁴⁷⁶ See Perry, *Rebels and Revolutionaries in North China*, 251-54.

⁴⁷⁷ Zeng Guofan, *Zeng Guofan quanji* 曾國藩全集 (Complete Works of Zeng Guofan) (Changsha: Yuelu shushe, 1994), vol. 14, 466.

⁴⁷⁸ *Da Qing Dezong Jing (Guangxu) Huangdi Shilu*, 402: 251b-252a.

⁴⁷⁹ *Shen Bao* 118, September 14, 1872, 3-4.

⁴⁸⁰ Zhongguo diyi lishi dang’an guan 中國第一歷史檔案館, “Tongzhi nianjian gelaohui shiliao” 同治年間哥老會史料 (Materials on the Gelaohui during the Tongzhi Reign), *Lishi dang’an* 歷史檔案 (Historical Archives), 1998, no. 4: 32-43.

communities. Many of them even called their fellows to join *gu* (股) bandits and *tang* (堂) associations together. As Li Hanzhang (李瀚章) stated in his memorial in 1874, “bandits and roaming braves collaborated everywhere, and hooligans and robbers usually robbed and killed people together.”⁴⁸¹

In the following decades, roaming braves became one of the targets of government’s suppression. The state did not quickly adopt severe policy towards unorganized soldiers, but it eventually set its tone in 1882 and extensively executed vagrants with former military backgrounds. What made the trend further intriguing was the transformation of summary execution, which was not only an element of a larger trend of regionalization in political structure but also a systematic exclusion of bandits, sectarian organizations, rebels, and now the loosely-defined roaming braves. The summary execution laws before the Taiping Rebellion primarily operated on bureaucratic communication and the majority of cases were strictly scrutinized by the centre. Contrary to this, the “execution on the spot” (*jiudi zhengfa* 就地正法) procedure during the Taiping era allowed all officers and local militia to inflict the death penalty without prior approval.⁴⁸² After the disastrous civil war, the Qing state intended to recover its regular judicial review system, which required all capital cases to go through a local-to-central reporting procedure before the final execution. However, many governors continued to request extensions of summary execution laws. The imperial centre, while fully aware that expedient punishment may harm its control over local authorities, continued to

⁴⁸¹ *Shen Bao* 664, June 29, 1874, 9-10.

⁴⁸² See *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu* 大清文宗顯皇帝實錄, in *Da Qing lichao shilu* 大清歷朝實錄 (Veritable Records of the Great Qing) (Taipei: Huawen, 1964 reprint), Xianfeng, 88: 165a.

approve the extension for each province.⁴⁸³ Deeply structured by the financial constraints and the emerging social unrest, the imperial centre had no choice but to yield to the growing power of governors. Even after the Qing state introduced the Western law and military systems to comfort reform-minded subjects while reconsolidating central control at the same time, the expedient punishment still prevailed and the local officers continued to execute bandits without prior report.

The war against roaming braves was part of the trend of summary execution. However, it also differs from the trend in many ways particularly because the Qing authorities manipulated the epidemic of “braves” in their governance and local defense. In 1905, the *Chinese and Foreign Daily* (*Zhongwai ribao* 中外日報) reported that “the authorities called them ‘roaming braves’ because they intended to kill them.... These people were disbanded soldiers when our country had no warfare. They turned from ordinary people to braves, and then turned from braves to wanderers. It is all because of the state’s policies.”⁴⁸⁴ While the Qing authorities extensively hunted and executed these wanderers, they continued to absorb local bullies in their defense and local security systems.

To understand fully Qing government’s paradoxical approaches, one has to first comprehend the network of violence and the trend of “local militarization,” which had significantly impacted social and political order during the late Qing period. Previous studies regarded summary execution as a barbaric and cruel institution that hampered the

⁴⁸³ Zhu Shoupeng 朱壽朋, ed., *Donghua xulu (Guangxu chao)* 東華續錄 (光緒朝) (Continuation of the Donghua Records: Guangxu Reign) (Shanghai: Shanghai jicheng tushu gongsi, 1909), 51–52, 55–56; Li Hongzhang 李鴻章, *Li Hongzhang quanji* 李鴻章全集 (Complete Works of Li Hongzhang) (Changchun: Shidai wenyi chubanshe, 1998), 1671.

⁴⁸⁴ See *Dongfang Zazhi* 2:3 (1905), 66–68.

judicial reforms in the early twentieth century. When it comes to banditry and special law, scholars either emphasize the epidemic of “unlawful” groups or criticized the overpowered governors and warlords for plunging the Chinese people into dire suffering. Recent studies of Chinese violence started to challenge the conventional thesis. As they point out, simply presuming violence as “deviance” or “disorder” will cloud our understanding of late-Qing society and the network of illegal elements.⁴⁸⁵ David Robinson’s argument particularly fits well in the case of roaming braves. As he points out, even during the relatively peaceful period of the mid-Ming, the “patronage network” of violence had been built between imperial court and local society.⁴⁸⁶ Based on the abundant resources of violence network, together with the rise of social powers and the increasingly diverse local society, the nineteenth-century China witnessed what Philip Kuhn calls “local militarization.”⁴⁸⁷ The militarization eventually led to the culture in which soldiers and bandits were indistinguishable. As a result, it was not only difficult to draw a boundary between braves and roaming braves but also hard to distinguish legality from illegality.

The epidemic of men who used force and the extended network of violence reveal the distinct characteristics of Chinese society. While the government relied on these men

⁴⁸⁵ Mark E. Lewis, *Sanctioned Violence in Early China* (Albany: State University of New York Press, 1990); Barend J. ter Haar, “Rethinking ‘Violence’ in Chinese Culture,” in *Meanings of Violence: A Cross-Cultural Perspective*, eds. Göran Aijmer and Jon Abbink (Oxford: Oxford University Press, 2000), 123–40; David M. Robinson, *Bandits, Eunuchs, and the Son of Heaven: Rebellion and the Economy of Violence in Mid-Ming China* (Honolulu: University of Hawaii Press, 2001); William T. Rowe, *Crimson Rain: Seven Centuries of Violence in a Chinese County* (Stanford: Stanford University Press, 2007); David Der-wei Wang, *The Monster That Is History: History, Violence, and Fictional Writing in Twentieth-Century China* (Berkeley: University of California Press, 2004).

⁴⁸⁶ Robinson, *Bandits, Eunuchs, and the Son of Heaven*, 2, 100–105, 163.

⁴⁸⁷ Philip A. Kuhn, *Rebellion and Its Enemies in Late Imperial China: Militarization and Social Structure, 1796–1864* (Cambridge: Harvard University Press, 1970), 165–88.

to suppress the rising rebellion and banditry, it also feared that these men would join the latter. The widespread vagrants following the wars enhanced the popular anxiety toward these marginalized groups. While the imperial centre and regional authorities adopted summary execution, local elite used *baojia*, militia, and other forms of social organizations to deter crimes and expel these groups. Despite these efforts, the patronage network of violence had never vanished from Chinese society. It continued to fill in gangs of orthodox and heterodox organizations, while the authorities used extreme punishment on the one hand and extracted resources from the violence network on the other. In essence, militia as an organization of local toughs and several local elites inevitably met the problems of managing their own militants. Some militants drifted around and committed robbery with the weapons acquired from militia. This, in turn, made the government to continuously adopt severe punishment to sweep the braves outside the legitimate organizations. In the end, the extended network of violence and the co-existence of “legal” and “illegal” elements jointly structured what I call the “economy of punishment”—the spread and distribution of penal resources related to crime and violence. With this term, I place the punishment of roaming braves within the dynamics of law, politics, and the various realms of resource distribution. I use this notion to look into *when* and *how* different *actors*—including the emperor, governors, local officials, militia, and local actors—negotiated the use of extraordinary punishment and extended the practice of the death penalty from the “formal” and “government” realm to all sectors within the society. The conventional dichotomy between legality and illegality fails to explain Qing government’s paradoxical approach and the strategic use of extreme punishment. The previous view also fails to capture the broader social and cultural roots

of summary execution, which was not merely a product of “chaotic time” but rather an integral part of the equilibrium of a wide variety of orthodox and heterodox forces. As a result, I create the term “economy of punishment” to describe how competing forces negotiated and structured the ways of dealing with the death penalty and the men who used force that had been spread beyond the boundary between formal and informal, regular and exceptional, and state and society.

In order to understand the complex approaches towards the roaming braves, this chapter asks the following questions: Why did these unemployed braves join banditry and secret societies rather than returning home or settling down in the places where they were laid off? Why did the Qing government adopt a severe approach, empowering military units and local authorities to search widely for and execute these braves without full investigation? How did the extensive execution of roaming braves influence Chinese legal culture and society? This chapter answers these questions through the exploration of how roaming braves became an epidemic and how the Qing government, together with local authorities and community armed groups, consistently and systematically portrayed roaming braves as an imminent threat to public security.

As this chapter demonstrates, the Qing government had long feared the potential threat of the soldiers they recruited during the rebellion. Whether or not these recruited braves were surrendered rebels or militants in local society, they had diverse backgrounds and had frequently reverted to their former activities. Many of them had connection with secret societies, particularly Gelaohui, since these organizations offered a decent level of pay that the Qing militaries could hardly afford. After the end of the rebellion, when the Qing troops could no longer sustain their heavy expenditures, a large number of soldiers

were disbanded, including those who had military merits and achievements. Although some disbanded soldiers were able to start new businesses or enter into government-sponsored land reclamation projects, many others could not afford trips home and even did not have skills for living except fighting. Many such wanderers joined secret societies and local mobster groups. While the Qing militaries piled up large debts to their members, underground societies offered decent pay to attract disbanded soldiers. The Qing government, which took the most economical approach possible, did not give sufficient severance pay to laid-off braves. The underpaid soldiers increasingly joined religious sects, giving the authorities—who tended to view summary execution as one of the most convenient tools—a legitimate reason to suppress them. Militaries had already gotten rid of heavy financial burdens by disbanding the braves. Now they further swept up roaming braves in the name of public security, even though many such wanderers had not committed serious crimes.

In addition, the extensive hunt for roaming braves had become a special war after the Taiping Rebellion. Local officials and community security groups consistently persecuted those who acted oddly or simply spoke different dialects. The widely spread descriptions of the ghastly image of roaming braves further intensified the fear of unemployed toughs. In many cases, local officials executed suspects on a trumped-up charge of being roaming braves. Some of them reported to their supervisors that they had killed several roaming braves in order to demonstrate that they had fulfilled the government's expectations. On the other hand, local elites and ordinary people deemed the summary execution of roaming suspects as an important resolution for the worsening public security and social conflicts. When a riot and social unrest broke out, a prompt

execution of roaming braves usually reassured the public, even though the cases were supposed to be reported to the central government before the final execution. As a result, the persecution of roaming braves not only reinforced the legitimacy of exceptional punishment but also strengthened the view that roaming braves were a major social problem that needed to be eradicated through the most severe and even illicit measures.

In the following analysis, I explore the Qing suppression of roaming braves and the responses of society toward the punishment. The first section discusses how imperial centre shifted its accommodation approach to severe punishment. The Qing government continued to recruit braves to its military forces, but when soldiers deserted or were disbanded by the troops, they were usually suppressed by the government. The second section analyzes how regional officers hunted for roaming braves. Many officers arbitrarily accused local people as disbanded braves. In many occasions, braves and vagrants were hurriedly killed because officials intended to cover up scandals or simply punish those who did not obey their commands. In the third section, I examine how local militia, while being immersed in the suppression and quick execution, continued to engage in the violence against roaming braves. Local officials did not wish local militia to excessively execute the criminals as they did in the civil war, but they also relied on these local armed groups to help detect and capture the vagrants.

When Soldiers Became Wanderers

When the warfare was near the end, many officials started to suggest the Qing court to pay close attention to the braves. In 1862, Hunan Governor Mao Hongbin (毛鴻

賓) suggested that military commanders should be careful about any brave who applied to leave. The Tongzhi court responded to Mao's memorial and announced to all officials,

Ever since the outbreak of this war, hundreds of thousands of braves were recruited as imperial soldiers. These braves shared their hatred of the same enemy with us. Many of them killed bandits and accomplished a great achievement. Yet some of them became involved in banditry and were looked down upon by their fellows. After they received merits and secured their military ranks, they took these achievements as their protectors. They frequently asked for leave as though they were formally appointed officials that no other local officials could ever restrain. ... These unruly braves gradually formed factions and disturbed the order of local communities. All military commanders and local authorities should strictly control these braves and investigate their activities so that chaos can be prevented. 軍興以來，各路軍營召募兵丁，不下數十萬人。其志切同仇，殺賊立功者，固屬不少。亦有曾充匪類，為鄉里所不齒。一經投效，漸保官階。該勇弁恃有護身之符，輒告假回家，儼然以職官自命，不受地方官約束。..... 黨與漸多，擾害鄉里。亟應嚴行查辦，以杜亂萌。⁴⁸⁸

⁴⁸⁸ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 35: 929a-930a.

Surrendered soldiers further complicated the situation. In 1862, Taiping commander Tong Ronghai (童容海) led over 60,000 soldiers to surrender to the imperial forces. Zeng asked his subordinate commander Bao Chao (鮑超) to deal with Tong's surrender, keeping only 2,000 of Tong's braves and disbanding the rest. The Qing court then asked Zeng to retain more than 2,000 of Tong's soldiers, worrying that the large number of disbanded soldiers would soon become bandits.⁴⁸⁹ In some cases, the imperial centre preferred using militia because they caused fewer problems than surrendered troops in terms of post-war dissolution.⁴⁹⁰

Now it seems to all depend on the general Zeng Guofan. He had been criticized for his excessive power and indiscriminate killing during the Taiping Rebellion. His braves committed robbery and even massacred women, elders, and children during the battles.⁴⁹¹ He could not afford the salaries of these braves, and the imperial court would not provide further financial support. The end of the war gave him a chance to disassociate himself from the troublesome braves. As previously stated, Zeng eventually decided to draw a clear line between what he saw as good and bad braves. While some governors tended to accommodate the unemployed braves, Zeng was reluctant to empathize with them. He knew that many braves had become sworn sect members during their service in the Xiang Army. He preferred to enact strict punishments for those wanderers who failed to return home or help restore the devastated regions.

⁴⁸⁹ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 35: 948b-949b.

⁴⁹⁰ See, for instance, *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 35: 943b-946a.

⁴⁹¹ Taiping tianguo lishi bowuguan 太平天國歷史博物館 ed., *Taiping tianguo shiliao congbian jianji* 太平天國史料叢編簡輯 (Compilation of Historical Materials on the Taiping Heavenly Kingdom) (Shanghai: Zhonghua shuju Shanghai bianjisuo, 1962), vol. 3, 373, 387.

In the following years, a large crowd of braves were released and they immediately flooded to counties and cities across the nation. The dissolution after the Taiping Rebellion was only the first wave of this crowd. Following the Sino-French War (1883–85) and the Sino-Japanese War (1894–95), the Qing government further disbanded a large number of mercenaries.⁴⁹² Hundreds of thousands of roaming braves had no household, no taxation records, and even no place to go. Many of them joined secret societies and mobster groups and reportedly committed robbery, murder, human trafficking, and smuggling.⁴⁹³ As Liang Qichao (梁啟超) observed in 1902, “the flood of roaming braves had become a real epidemic in recent decades. They continuously killed and robbed civilians and were fond of making trouble. They viewed raising a revolt as their general diet.”⁴⁹⁴

While the Qing court had guarded against the spread of roaming braves, it had not decided if it should accommodate these wanderers even after the imperial troops released hundreds of thousands of soldiers. Both harsh and moderate approaches were taken, and the authorities had gradually strengthened the investigation of roaming suspects. The imperial centre usually approved every governor’s requests for summary execution, as long as the cases reported involved banditry or other felony crimes. The summary execution law used during the Taiping Rebellion continued to be used after the war. In

⁴⁹² Zhou Yumin 周育民, “Jiawu zhanghou Qingchao caizheng yanjiu (1894–1899)” 甲午戰後清朝財政研究 (1894–1899) (Studies on the Qing Dynasty Finance after the Sino-Japanese War), *Zhongguo jingji shi yanjiu* 中國經濟史研究 (Researches in Chinese Economic History) 1989, no. 4 (1984): 88–103; Luo Ergan, *Lüying bingzhi* 綠營兵志 (History of the Green Standard Army) (Beijing: Zhonghua shuju, 1984), 88.

⁴⁹³ *Da Qing Dezong Jing (Guangxu) Huangdi Shilu*, 20: 316a–316b.

⁴⁹⁴ Liang Qichao 梁啟超, *Yinbingshi heji* 飲冰室合集 (Collected Works from the Ice-Drinker’s [Liang Qichao] Studio) (Beijing: Zhonghua shuju, 1989), 130.

1869, the Tongzhi court issued an edict stating that the previous summary execution laws were expedient and merely temporary measures. However, the court also permitted the regions involved in the war to continue to use the militarized procedure.⁴⁹⁵ As the Board of Punishment later admitted, summary execution was difficult to abolish because even after the war regional governments still relied on it in suppressing theft and robbery.⁴⁹⁶ In order to keep it an exceptional practice, the Qing court granted each province only a few years to carry out summary execution. The governors had to defend the need for such punishment, and they would be criticized if they failed to use their power properly. The renewed policies required governors to submit reports periodically, securing the imperial control over summary execution.⁴⁹⁷ Despite the exceptional status of summary execution, the Qing court continued to extend the laws for each province.⁴⁹⁸

The problem then was the lack of legal grounds to punish roaming braves. In the cases involving the Gelaohui, local authorities could summarily execute the suspects since the Qing government had long persecuted such sect bandits. Officials could also summarily execute braves involved in illegal trade, usually called “fierce smugglers” (*sixiao* 私梟) by the government, because the Qing court had extended the indiscriminate execution to not only robbery but also smuggling, resisting arrest, and coin

⁴⁹⁵ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 253: 523a-523b.

⁴⁹⁶ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 84: 746b-747a.

⁴⁹⁷ Suzuki Hidemitsu, “Shinmatsu shūchi seihō kō” 清末就地正法考 (A Study on Late Qing Summary Execution Procedure), *Tōyō bunka kankyūjō kiyō* 東洋文化研究所紀要 (The Memoirs of the Institute of Oriental Culture) 145 (2004): 35-38.

⁴⁹⁸ Zhu Shoupeng 朱壽朋, ed., *Donghua xulu (Guangxu chao)* 東華續錄 (光緒朝) (Continuation of the Donghua Records: Guangxu Reign) (Shanghai: Shanghai jicheng tushu gongsi, 1909), 51-52, 55-56; Li Hongzhang 李鴻章, *Li Hongzhang quanji* 李鴻章全集 (Complete Works of Li Hongzhang) (Changchun: Shidai wenyi chubanshe, 1998), 1671.

counterfeiting.⁴⁹⁹ However, in cases where the braves were simply wandering around, officials could not execute them unless they had previous criminal records such as deserting from the army or joining banditry. Many officials and literati had expressed sympathy toward vagrants. The so-called “fierce smugglers” suffered privations and were forced to take a risk in running smuggling businesses.⁵⁰⁰ Many wanderers merely committed theft and extortion. As a result, it was difficult to determine if a moderate approach should be taken because many wanderers had not committed crimes but might yet cause disturbance to local communities.

Even during the latter half of the 1860s, when the Taiping forces were largely defeated, it was unrealistic for the Qing authorities to consider the accommodation approach. In September 1864, two months after the recovery of Nanjing, the Jiangning military general Fuminga (富明阿) disbanded his troops in the south and headed north to assist in the suppression of Gansu bandits. The emperor reminded him to capture all the disturbing roaming braves along his trip to the north, and make sure “no [roaming braves] escaped unpunished.”⁵⁰¹ Two years later, when Zeng Guofan was battling against Nian rebels, the emperor reminded Zeng and his collaborating generals that “there were many defeated troops, and thus it’s necessary to use massive military force to suppress all these braves.”⁵⁰² In 1867, fearing the spread of Gelaohui, the Tongzhi court commanded all officials to summarily execute any roaming brave who had contact with bandits.⁵⁰³ Zeng and some governors did consider moderate approaches, including “sending [braves] to

⁴⁹⁹ *Da Qing Wenzong Xian (Xianfeng) Huangdi Shilu*, 230: 582a.

⁵⁰⁰ *Shen Bao* 4535, November 27, 1885, 1.

⁵⁰¹ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 114: 547b-548a.

⁵⁰² *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 143: 370a-370b.

⁵⁰³ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 211: 738a-739a.

cultivate land” (*[yongding] guinong* [勇丁] 歸農), but these approaches could not stop braves from wandering around, and thus the Qing court still had to keep a wary eye on them.⁵⁰⁴

In order to make sure that roaming braves did not disturb local communities, the Qing authorities adopted some local security institutions, including the centuries-old system of *baojia*. As dynastic rulers designed it, this system aimed to strengthen law enforcement and civil control through a basic level of militarization of local communities. Qing rulers intended to strengthen the community-based local security system through the organization of *baojia*. However, as in the previous dynasties, the system was not strictly enforced in local society. In encountering social revolt, the Qing authorities usually commanded their local agents to re-establish the gradually decaying *baojia* system. Similar to the recruiting of braves to imperial forces, organizing militia was the most cost-optimal approach to the strengthening of local defence. During the Taiping Rebellion, Zeng Guofan and many governors also exhorted their subordinates strictly to enforce *baojia* and prevent the spread of banditry. Such an approach did not always achieve official goals because local militia and elite groups frequently abused bandit suppression for political struggles and feuding.⁵⁰⁵ Yet local officials continued to organize *baojia* because they had to utilize all sorts of resources to combat increasing social problems.

⁵⁰⁴ See, for instance, *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 112: 236a-237a.

⁵⁰⁵ Chen Baoshan 陳寶善 et al., *Guangxu Huangyan xianzhi* 光緒黃巖縣志 (Huangyan County Gazetteer Compiled during the Guangxu Reign) (Shanghai: Shanghai shudian, 1993), juan 38, 29-30.

In 1864, the Hunan Governor Yun Shilin (惲世臨) commanded his subordinates to supervise the local organization of *baojia* in the battles against roaming braves. In his “The Announcement on Promoting Militia and Scrutinizing *Baojia* in Order to Resist against Roaming braves” (*Yu ju tuanlian cha baojia yi zhi youyong* 諭舉團練查保甲以制游勇), Yun first stated the necessity of using militia in the battles against roaming braves,

After the recovery of Nanjing, the order of the southeastern provinces was gradually restored. However, when the soldiers returned home in triumph, roaming braves also came back alongside the troops. These braves inevitably took this chance to gather together and rob ordinary people. As a result, we should quickly consolidate local militia to defend local communities. Previously, when the rebels rapidly spread, militia groups were undisciplined, and they were unfamiliar with the defence work. At that time, they could make excuses that they had difficulty in budgets and lacked sufficient momentum. Now these groups can make concerted efforts to prevent the deluge of roaming braves, so they should not spend strenuous effort and the results will easily be seen. 現在金陵克復，東南各省漸就肅清。惟各營凱撤，勇丁紛紛回籍，隨營游勇亦多相率歸來，三五成群、乘機搶之事必所不免，亟應整頓團練，以衛地方。查

從前賊勢蔓延，團眾紀律未爛，猶可以氣勢之弱、經費之艱，藉詞推諉。今但齊心合力以防游勇之肆行，其事不勞而其功易見。⁵⁰⁶

In the latter half of his announcement, Yun permitted local militia to execute roaming braves without prior report.

On the other hand, roaming braves drifted from place to place, and their gathering and departing was extremely uncertain. Unlike large groups of bandits, it is hard to predict the actions of roaming braves and guard against their disturbance beforehand. As a result, it is more difficult to battle against them than the rebels and bandits. We can only do our utmost to organize militia and repress the reckless wanderers. As to the legal grounds for organizing militia, we previously had a guideline. The officials should explain to locals the importance of helping each other in defence work and that this method has everything to gain and nothing to lose. In the selection of a militia leader, officials should choose a righteous and impartial person who can convince the majority. Officials should strictly supervise the operation of *baojia* and make sure no stranger and suspicious person stays in the territory (*bu ling miansheng keyi zhe zai jing tingliu* 不令面生可疑者在境停留). When there is something to do, all militia members should gather and no one should find an excuse for

⁵⁰⁶ Yang Yiqing 楊奕青 et al., *Hunan difangzhi zhong de taiping tianguo shiliao* 湖南地方志中的太平天國史料 (Materials on the Taiping Heavenly Kingdom from Hunan Gazetteers) (Changsha: Yuelu shushe, 1983), 129-30.

absence. When roaming braves cause disturbances, they have only hundreds of members at the most. Such a group will not prevail against the power of a solidary militia. As long as we consolidate our militia, we do not need to have much training and waste money and food, and the effectiveness of defence work will be appreciable. If the roaming braves dare to resist arrest, militia members, as I permit, can execute them without exception (*gesha wulun* 格殺勿論). Only through these strict precautions will the roaming braves not fulfil their wishes. These measures could also make them repent and turn them into good people (*liangmin* 良民). 但游勇去來無定，聚散無常，非如大股逆賊，可以先期探明，預圖趨避。是其為害，視賊匪尤為難防，獨有實力辦團足以制之，使不敢逞。辦團之法，從前具有章程。總宜深明守望友助之誼，互相保衛，乃為有利無弊。選派團總，務擇廉明公正，足以服眾之人。平日嚴查保甲，不令面生可疑者在境停留。有事則團眾齊集，毋得托故不到。游勇滋事，至多不過數十百人，斷不能敵合團之力，此不必練習技藝、糜費錢米而自有成效可觀者也。至游勇如敢拒捕，准團眾格殺勿論。似此處處防範嚴密，游勇無從逞志，亦且自知改悔，變為良民。⁵⁰⁷

Yun's approach of using local forces to execute roaming braves was not uncommon during the post-Taiping period. He clearly knew how unrealistic it was to

⁵⁰⁷ Ibid.

send these braves to cultivate land. Like most governors, he viewed the sweeping away of roaming braves as another kind of war. They feared the drifting status of these braves, who might turn from bandit suppressers into bandits. In some cases, the braves' disturbance to local communities even forced local people to become "bandits."

In February 1868, the General of Uliastai, Deleke Duoerji (德勒克多爾濟), reported from the suppression frontlines of Mongolia that many of the "bandits" were actually refugees. A number of imperial soldiers had escaped from the troops and turned into roaming braves. They robbed local communities and forced local people to resist against the troops. In response, the Tongzhi court adopted a similar approach to that he had taken in the past. It ordered the military to provide sufficient funds for disbanded soldiers to return home, and he directed local authorities to expel all the roaming braves.⁵⁰⁸ In fact, throughout the long period following the end of the Taiping Rebellion, the authorities' policy was a combination of paradoxical approaches. Borrowing the words of the Tongzhi court, the imperial policy was to "neither push [roaming braves] too harshly nor tolerate their rampaging."⁵⁰⁹ The authorities continued to ask these braves to return home while at the same time they also expelled and even killed the braves when they moved around.

Expulsion and exclusion were, then, the major approaches toward the roaming braves. But the Qing court also considered the policy that they once promoted and largely relied on—recruiting these wanderers to the imperial military system. The Taiping Rebellion proved that this policy could not only supplement the weakening standard force but also place the unruly braves under the control of the military. The imperial centre also

⁵⁰⁸ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 260: 617a-617b.

⁵⁰⁹ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 262: 634b-635b.

knew that the wide expansion of braves was more an institutional issue than mere social problem. Several months after Deleke Duoerji's report, the chief executive for the Minister of War, Li Yanghua (李揚華), challenged the existing policies by proposing an entirely different approach. Concerning both finance and public security issues, Li argued that many troops lied about the number of their braves so that the government could grant them more money for salaries. Such behaviour was certainly intolerable within the government's system, particularly when the government was unable to afford the huge military expenditure. However, the original military force of the empire, the Green Standard Army, had been weakening for decades and wasted more money than the recruited braves. Given that the large number of disbanded braves would exacerbate the already worsening social problems, Li suggested that the imperial court "selectively replace" (*tiaobu* 挑補) the weakening Green Standard Army with roaming braves.⁵¹⁰

The financial issues with the Green Standard Army had existed for many years. Only a few years earlier, Zeng Guofan criticized the state for "feeding the Green Standard Army for two centuries" that was still unable to resist against the rebels.⁵¹¹ The government was gradually unable to afford the salaries and even had no funds to upgrade and repair weapons.⁵¹² During the Taiping Rebellion, the Green Standard Army also experienced scandals concerning lying about the amount of rice for soldiers.⁵¹³ Weighing between the braves and standard forces, the emperor wondered what the governors

⁵¹⁰ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 247: 435a-435b.

⁵¹¹ Luo, *Luo Ergan quanji*, vol. 14, 161.

⁵¹² Hsu Hsueh-chi 許雪姬, *Qingdai Taiwan de lüying* 清代台灣的綠營 (The Green Standard Army in Qing Dynasty Taiwan) (Taipei: Zhongyang yanjiuyuan jindaishi yanjiusuo, 1987), 67-68.

⁵¹³ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 116: 840a.

thought of Li's suggestion.⁵¹⁴ Replacing a problematic troop with yet another problematic army might not be a good idea, but the replacement might help improve national defence at less cost. The emperor then forwarded his correspondences with Li to the governors. He knew that previous emperors had disbanded regular forces after significant battles. He was just not sure if it was appropriate to replace the formal troops with roaming braves, who had been a serious trouble to the military and local communities.

Probably because Li's suggestion criticized the governors for rounding up the number of braves, there were no immediate responses during this heated moment. Governors had been frequently granted the authority to command regular armies, but they had to avoid any suspicion of the scandal. The emperor was cautious about this issue. He knew that some governors general would disagree with Li. Four years earlier, when Zeng Guofan decided to disband his Xiang Army, the imperial censor Chen Tingjing (陳廷經) had suggested that the court replace regular soldiers with disbanded braves. Zeng immediately responded and criticized the idea of "selective replacement":

Now that we have broken the bandit's den, the situation of pacification is nearly set. If we disband one brave, we will save the expenditures of two braves. This will definitely forestall future troubles....

Recently, many officials suggested replacing regular soldiers with selected braves. I respectfully disagree with this idea. The main reason is that the ration of braves was two times that of cavalries and three times that of

⁵¹⁴ *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 247: 435a-435b.

garrison soldiers. The cavalries had only a few vacancies, and the garrison soldiers received only one *liang* of ration—it's totally insufficient to live on. Who would like to travel thousands of *li* to just fill the vacancies and receive little money? Most of my honest Hunan braves would not like to serve as a Sanjiang Green Standard Army soldier. Only a few of them might be interested in filling the vacancy, and these interested braves must be idle, lazy, and wandering around without going home.

As I humbly suggest, the best policy toward the braves is to send them back to their native places. For the regular soldiers, each brigade should recruit new soldiers from its locality. Everything will get back to the way it was if we adopt this method. This will be the best plan for the long future. 今幸老巢既破，大局粗定，裁一勇，即節二勇之糜費，亦即銷無窮之後患。……至挑補兵額之說，近多建此議者。臣竊不以為然。蓋勇丁之口糧，一倍於馬兵，三倍於守兵。馬兵之缺極少。守糧月支一兩，斷不足供衣食之需，誰肯於數千里之外，補一衣食不敷之缺？欲以湖南樸實之勇，補三江綠營之兵，必不情願。其願補者，皆游惰無歸者也。臣愚，以為勇則遣回原籍，兵則另募土著，各返本而復始，庶為經久可行之道。⁵¹⁵

⁵¹⁵ Zeng, *Zuben Zeng Wenzheng gong quanji*, 346.

Zeng suggested the court to send these braves back to their native places. For the regular soldiers, he argued that each brigade should recruit new soldiers from its locality. To him, everything will get back to the way it was if the court adopts this method. “This will be the best plan for the long future,” Zeng stated.⁵¹⁶

Zeng’s reluctance of transforming his braves into regular soldiers was closely related to the recruitment institutions. Ever since the later years of the Taiping Rebellion, the Ministry of War had commanded the provinces to follow the recruitment procedures and fill up the required quota for each jurisdiction.⁵¹⁷ Such recruitment had to follow the formal regulations in terms of management and dismissal. Contrary to this, the recruitment procedure for the braves was flexible, and the disbanding of these braves was relatively easy. Military officers could either fire braves or make up inflated figures to the court, whereas in regular troops such behaviour was far more difficult. In 1871, the Ministry of War official Hu Jiayu (胡家玉) offered his belated response to Li Yanghua’s suggestion. He first argued Li was correct in pointing out that the actual number of braves was between 50 to 60 percent and 70 to 80 percent of the reported number. He then supported the idea of disbanding based on a cost-benefit analysis.

Now that the Taiping and Nian are pacified, we have an opportunity to manage our regional troops. Our Ministry has all the records of soldiers’ salaries and rations, but we still do not know the exact number of braves. ...

⁵¹⁶ Ibid.

⁵¹⁷ See, for instance, *Da Qing Muzong Yi (Tongzhi) Huangdi Shilu*, 107: 352b.

The chief executive for the Minister of War, Li Yanghua, previously served in the Shaanxi brigades. He angrily stated that the actual number of braves was between 50 to 60 percent and 70 to 80 percent of the reported number. He further wrote a report last year suggesting that the court strictly investigate the number of braves.

Recently, a number of military officials were also impeached by the censors for managing a fewer number of soldiers than the written record. This proves that Li Yanghua's account was true and based on evidence. ...

Some people argue that military braves were experienced in fighting; they could kill the rebels and achieve victory, and thus once we disband them we may not be able to quickly assemble them in the case of emergency. I disagree with this idea. During the fourth and fifth years of the Xianfeng reign, when I was staying in my home-town, I witnessed how local officials and military camps recruited braves in the encounter with the rising rebels. Thousands of people joined the troops soon after the registration was open. When the army was formed up today, it was ready to go on an expedition tomorrow....

Some people fear these braves will turn into bandits and thus they continue to hire them and feed their families. Over the years, these braves have become regular braves. If we calculate the salary based on the Xiang

Army's regulations, a thousand braves will take 5,800 *liang*, ten thousand braves will need 58,000 *liang*, and one hundred thousand braves need 580,000 *liang*. If it's two hundred thousand braves, the salaries will reach 14 million or 15 million *liang*....

All these expenditures, including the salaries of bureau staff, the labour fee paid to the petty officials, and the rations for the garrison braves, come from the taxes squeezed out of ordinary people. Not to mention that local authorities had a wide array of levies and taxes with a multitude of names and all sorts of traps. 今幸髮、捻各逆一律蕩平，凡軍營餉項部中皆有案可稽，所不得知者勇數耳。..... 兵部司員李揚華從陝西軍營來，言各營勇丁多不過七八成，少則不及五六成，憤恨形於詞色。該司員前年故有嚴查營勇之疏。近見營牟因勇不足數被劾者亦往往而有，是李揚華之說信而有徵。..... 或謂此項勇丁皆百戰之餘，能殺賊，能制勝，一經裁撤，設有緩急，招之未必遽來，何所恃而不恐。臣曰不然，咸豐四五年間，臣在籍時，賊氛正熾，目擊地方官及各軍營招募勇丁，一呼而輒數千人，今日成軍，明日即令御賊。..... 如慮勇敢為匪，不惜無數帑金養其家，贍其家，年復一年，竟成額勇。即以湘勇餉章計之，千勇月需銀五千八百兩，萬勇月需銀五萬八千兩，十萬勇月需銀五十八萬兩，若數至二十萬，則歲需銀一千四五百萬

兩。……局員之薪水、吏胥之工食、護局卡兵勇之口糧，皆小民之膏血也，而且層層網羅，處處陷阱。⁵¹⁸

When the nation's coffers were increasingly deficient, both central and regional governments were reluctant to turn the braves into formal soldiers. The operation of the Green Standard Army not only enhanced the state's financial burden but also involved complex interactions between various regional authorities, including Governors, Regional Commanders (*zongbing* 總兵), Provincial Military Commanders (*tidu* 提督), and the Residence Military Commander (*zhufang jiangjun* 駐防將軍).⁵¹⁹ The management of braves was relatively flexible, but regional officials had to impose heavy levies for maintaining the armies, and this could draw resistance from local people. The best policy was to disband both regular soldiers and military braves and then execute the disbanded braves who were wandering around. Only a few officials would like to show sympathy toward roaming braves. Such sympathy rarely received support from other officials.

In 1875, the Viceroy of Liangjiang, Liu Kunyi (劉坤一), suggested that the court command the governors to be merciful and recruit roaming braves. Citing the regulation of Jiangxi, Liu argued that this policy could be extended to other provinces. Since finances were a major concern of regional authorities, Liu suggested reducing the salaries to half of the amount of regular pay. The new emperor, Guangxu, who was then under the influence of Empress Dowager Cixi, expressed concern about the hardship of roaming

⁵¹⁸ Gu Tinglong 顧廷龍 and Dai Yi 戴逸 ed., *Li Hongzhang quanji* 李鴻章全集 (Complete Works of Li Hongzhang) (Hefei: Anhui jiaoyu chubanshe, 2008), vol. 4, 517-19.

⁵¹⁹ For the finance and management of the Qing Dynasty's military, see Yingcong Dai, "Military Finance of the High Qing Period: An Overview," in *Military Culture in Imperial China*, ed. Nicola Di Cosmo (Cambridge: Harvard University Press, 2009), 296-316.

braves. He commanded governors to recruit braves, but he also reiterated that this was “entirely at the governor’s discretion” and that governors should never tolerate any vicious brave.⁵²⁰ Liu’s approach was quickly criticized. Li Hanzhang, who then served as Sichuan Governor, argued that the recruitment would increase military expenditure without preventing these braves from disturbing local security.⁵²¹ Li’s argument was based on his experiences fighting against roaming braves. He had long defended the use of summary execution on disbanded braves and he argued that the conventional system of judicial reporting should not be used in this kind of case.⁵²² Similar with Zeng Guofan and Hu Jiayu, Li didn’t believe that recruitment could turn these “wild” elements into good ones.⁵²³ It seemed clear to these officers that killing the braves was more economical than keeping them alive.

In fact, the 1875 debate was more about the possibility of a nation-wide policy than the discussion of “merciful recruitment” at half-priced salaries. Before this, as the Guangxu emperor stated, roaming brave policy was “entirely at the governor’s discretion.” Liu Kunyi was probably the first governor to ask the court to assign a policy to other governors regarding the roaming brave arrangement. Even the imperial centre, which had asked Liu to adopt summary execution in the cases of bandits and unorganized soldiers, did not extend this policy nationally.⁵²⁴ The throne forwarded Liu’s opinion to

⁵²⁰ *Da Qing Dezong Jing (Guangxu) Huangdi Shilu*, 20: 316a-317a.

⁵²¹ *Da Qing Dezong Jing (Guangxu) Huangdi Shilu*, 24: 359a-360a. Wu Shanzhong argues that the main reason behind the disagreement was governors’ reluctance to return the military power to the imperial centre. See Wu, “Kemin, youyong, yanxiao,” 32-33.

⁵²² *Shen Bao* 664, June 29, 1874, 9-10.

⁵²³ Wu, “Kemin, youyong, yanxiao,” 32-33.

⁵²⁴ *Shen Bao* 963, February 22, 1875, 3-4.

all the governors, probably in the hope that governors could have a say before adopting another governor's suggestion.

In the following years, the Qing court continued to approve summary execution on a case-by-case basis. In 1882, the imperial centre finally set its tone toward the roaming braves. In response to the continued flourishing of unorganized braves, the Qing court approved the revision of the summary execution guideline. The new guideline continued to apply “execution on the spot” to “local bandits” (*tufei* 土匪) and “thieves on horseback” (*mazei* 馬賊), while adding “roaming braves” and “sect bandits” (*huifei* 會匪) as targets of summary execution.⁵²⁵ The co-appearance of roaming braves and sect bandits reflected the rationale behind the legislation, which was to prevent unorganized strongmen from joining local sects and rebel groups. In the eyes of the centre, their military backgrounds, vagrant-like status, and frequent collective action made these braves more dangerous than the regular individual robbers who, unlike roaming braves, were allowed to receive full and elaborate judicial review as long as they had not committed other serious crimes at the same time.

Although the 1882 guideline derived from the idea that summary execution should be restricted to certain types of cases, it granted governors solid legal grounds on which to execute roaming braves. In the last decades of the Qing dynasty, the authorities rarely considered a moderate approach toward these wanderers. Even though roaming braves suffered hunger and cold, the most common approach was to kill them on the spot.

⁵²⁵ *Da Qing huidian shili*, Xingbu, juan 850, Guangxu 8 nian, vol. 9, 1232b-1233a; Qingshigao, Zhi, juan 118, 4193.

Such policy reinforced the popular fear of roaming braves and legitimated the hunting of them in nearly every locality across the nation.

Hunting for Living Ghosts

When the Tongzhi court exhorted the governors to keep a wary eye on roaming braves, he probably had little knowledge about how officials identified and captured disbanded veterans. Roaming braves, as Yun Shilin pointed out, “drifted from place to place and, their gathering and departing was extremely uncertain.” Yun and other governors repeatedly reported how difficult it was to combat such ghostly and drifting groups. They required *baojia* and militia to patrol every corner of their guarding areas. They also prevented wanderers from connecting with other bandits.⁵²⁶ Apparently, a large-scale hunt for roaming braves was taking place in the nation. Local communities even viewed the punishment of roaming braves as an important index in defining good officials.

In 1886, for example, the *Shen Bao* reported the achievements of the new Zhejiang Governor, Wei Rongguang (衛榮光). The first achievement of Wei’s new policy that many people “craned their necks and waited to see,” as *Shen Bao* described it, was the intensive campaign of “expelling roaming braves.” Wei commanded his subordinates to inspect every tea house, bistro, inn, and temple. He reiterated that disbanded veterans had received redundancy payments and should never stay away from their home. If they stayed overnight and were caught by officials, they were to be

⁵²⁶ See, for instance, Liu Jun 劉浚 and Pan Zhairan 潘宅仁, *Tongzhi Xiaofeng xianzhi* 同治孝豐縣志 (Xiaofeng County Gazetteer Compiled during the Tongzhi Reign) (Shanghai: Shanghai shudian, 1993), juan 8, 4-5.

executed right away even if they had committed no felony crime. Anyone who hid these braves or withheld their information from the authorities would also be seriously punished.⁵²⁷ In fact, in the last years of the Taiping Rebellion, the Zhejiang Governor, Zuo Zongtang, had announced similar policies, and the inspection continued during the following governor's reign.⁵²⁸

Due to the consistent efforts of the governors, the prefectures and counties in Zhejiang also issued a series of regulations regarding the punishment of roaming braves. In an 1887 Zhejiang announcement, the Surveillance Commissioner reiterated the significance of the *baojia* policy and stipulated a detailed classification of different people. The “vagrants” (*liuyu* 流寓 and *yumin* 遊民) had to be registered with the *baojia* system with a local guarantor. The “*kemin*” (客民; literally “guest people,” sometimes interchangeable with the term “Hakka”) constituted a separate category within the *baojia* and its leader was required to collaborate with native leaders in the maintenance of order. In contrast, the “roaming braves” were to be expelled, and no one from this category was allowed to stay in the city overnight. The regulation pointed out that some “refugees” (*nanmin* 難民) were previously military braves. Thus, the authorities had to interrogate these people and expel them once it was confirmed they were roaming braves.⁵²⁹ The differentiation between vagrants and roaming braves reflected the fundamental logic of the Qing government. Roaming braves' backgrounds made them violent and pugnacious.

⁵²⁷ *Shen Bao* 4856, October 21, 1886, 1-2.

⁵²⁸ Wang Wenbing 汪文炳 ed., *Guangxu Fuyang xianzhi* 光緒富陽縣志 (Fuyang County Gazetteer Compiled during the Guangxu Reign) (Taipei: Chengwen, 1983 reprint), juan 14, 14-15; Zhang Rui 張濬 and Wang Ruicheng 王瑞成 eds., *Guangxu Ninghai xianzhi* 光緒寧海縣志 (Ninghai County Gazetteer Compiled during the Guangxu Reign) (Taipei: Chengwen, 1975), juan 5, 12.

⁵²⁹ *Shen Bao* 5158, August 27, 1887, 2.

They were difficult to capture, and they were used to the game of cops and robbers. Sometimes these braves acted like vagrants and sometimes they were like rebels. In some cases, they even pretended to be military officers, which was the most intolerable act in the eyes of the authorities.⁵³⁰

Similar to many “bandit suppressions,” the hunt for roaming braves inevitably involved local politics and abuse of power. Ordinary people did not merely fear the disturbance of roaming braves. They feared everything related to this ghostly group, including being charged with hiding braves or having connections with them. The severe punishment compelled people to find a way to protect themselves. In many cases, roaming braves were not very different from vagrants or ordinary people. Tea houses and hotels usually detected suspects by their “Huguang accent,” an accent that had been reportedly spoken by many Xiang Army’s braves. In Hangzhou, some tea house owners suspected those who spoke Wenzhou or Taizhou dialects and acted differently to ordinary people.⁵³¹ Such identification measures were inevitably arbitrary, and the results could bring disaster to the suspects, as the punishment was summary execution.

In 1883, a monk at the Huanglong Cave (*Huanglongdong* 黃龍洞), one among various caves that had long attracted tourists outside the Qiantang Gate of Hangzhou, met a military officer demanding to inspect his cave. The officer had a Huguang accent. He dressed in imperial robe and hat and commanded eight soldiers. Claiming to have the order of Zhejiang Governor Liu Bingzhang (劉秉璋), the officer said that he intended to check if any roaming brave, bandit, or unauthorized weapon was hiding in the area.

⁵³⁰ For an example, see the following discussion on Huanglong Cave.

⁵³¹ *Shen Bao* 2918, June 17, 1881, 2; *Shen Bao* 3795, November 14, 1883, 2; *Shen Bao* 4829, September 24, 1886, 1; *Shen Bao* 5076, June 5, 1887, 2; *Shen Bao* 9391, June 8, 1899, 3.

These words terrified the monk. He kneeled down and argued that there were no such things in the cave. The officer was apparently unsatisfied with this answer. He commanded his soldiers to search the cave, discovering a western style gun, a pack of gunpowder, a long spear, and several daggers. The monk then quickly kneeled down again, stating that these weapons were for hunting animals only. The officer was extremely angry. He threatened to send the monk to the governor's office. Fearing serious punishment, the monk agreed to pay 80 *yang* dollars to the officer. Since there were only 40 dollars in the cave, he signed a note promising that he would pay the rest in ten days. After the officer and soldiers had left, the monk went to see a Hunan military official to check whether there was any inspection in the area. He quickly realized that there was no such officer in the camp, and the governor had never issued such a command. In ten days, when the fake military officer came back to the cave, the monk ordered ten strong men to catch him. They sent him to the military camp while the pretend soldiers, who all seemed to be roaming braves, escaped arrest.⁵³²

The Huanglong Cave case not only reveals that braves attempted to impersonate officers⁵³³ but also demonstrates the popular fear of the charge of being associated with braves. People feared to get involved in an official's investigation because the judicial process might bring disastrous treatment and severe punishment. On the other hand, government inspection was inevitably arbitrary, particularly because of the difficulty of identifying braves. Accents and the possession of weapons were the most common elements considered in the interrogation. In actual practice, local officials might abuse

⁵³² *Shen Bao* 3795, November 14, 1883, 2.

⁵³³ There are many such cases. See, for instance, *Shen Bao* 3795, November 14, 1883, 2; *Shen Bao* 3880, February 4, 1884, 2; *Shen Bao* 6322, November 24, 1890, 9; *Shen Bao* 10919, September 12, 1903, 1-2; *Shen Bao* 11181, June 4, 1904, 3.

punishment in order to report their achievements to superior officials. As Tan Sitong (譚嗣同) noted in 1897, the interrogation utterly disregarded human lives:

When the authorities found a vagrant, they first confirmed if he was a military brave. If he were, he would be executed on the spot. Then the local officers could report to their supervising officials that they had killed several roaming braves [as though they had made certain achievements] ... 獲游民，先問其曾充營勇否。曾充營勇，即就地正法，而報上官曰：” 殺游勇若干人。” 上官即筵以為功.....⁵³⁴

In general, military authorities and local administrators rarely gave sufficient investigation to those without influential supporters. Many common criminals were falsely accused of being roaming braves.⁵³⁵ The extensive expulsion further enhanced the possibility of abuse. In May 1877, a robbery occurred in Changxing County, Zhejiang. On the night of May 2,⁵³⁶ several armed mobsters robbed the house of the Hu family. Hu Youmao (胡有毛) was fatally injured by the robbers. His son, Hu Shungou (胡順狗), was hidden in the dark and could see that half of the robbers were military braves. The next day, Hu Shungou reported the case to the magistrate. On May 4, two captured

⁵³⁴ Tan Sitong 譚嗣同, *Tan Sitong ji* 譚嗣同集 (Collected Works of Tan Sitong) (Changsha: Yuelu shushe, 2012), 368-69.

⁵³⁵ Yao Shide 姚詩德, *Guangxu Baling xianzhi* 光緒巴陵縣志 (Baling County Gazetteer Compiled during the Guangxu Reign) (Nanjing: Jiangsu guji chubanshe, 2002), juan 35, 1249; Jonathan K. Ocko, *Bureaucratic Reform in Provincial China: Ting Jih-ch'ang in Restoration Kiangsu* (Cambridge: Harvard University Press, 1983), 33-35.

⁵³⁶ Dates here correspond to the lunar calendar: May 2, 1877 (the third year of Guangxu's reign) in the lunar calendar converts to June 12 in the Western calendar.

roaming braves confessed the crime and stated that soldiers in the Chu Army conceived the entire plan. The magistrate then turned to the Chu Army camp and found five soldiers involved in the robbery. The five braves quickly admitted their offence and also confirmed the identity of several other accomplices.

The Vice Commander of the Chu Army, Neng Changfu (能常富), then tried to make a compromise with Hu, but the latter rejected it. Finding his compromise did not work, Neng insisted that the two roaming braves were the principal offenders. He did not follow the regular procedure of conveyance and detained the suspects in his camp. He had Zhang Chengyuan (張成元) pretended to be provincial messengers and claimed that the wanderers were responsible for the crime, and the five soldiers should be released. The magistrate declined to release the soldiers since they had made confessions. A provincial officer then interrogated the soldiers, and the soldiers repeated their confession. At this point, the military officer Zhu Mingliang (朱明亮) suddenly threatened the soldiers stating that such an offence would result in beheading, at which point the five soldiers quickly withdrew their confessions. They were returned to the camp without any punishment. In order to match the number of the accused listed in the records of the investigation, the military captured another three wanderers to join the two captured earlier. The five roaming braves then became the accused and were sent for review and sentencing.⁵³⁷

Furious at the adjudication, Hu Shungou brought the case to the capital in October. The imperial court sent the imperial censor to investigate. It also required the Zhejiang

⁵³⁷ *Shen Bao* 1728, December 10, 1877, 2; *Shen Bao* 1755, January 10, 1878, 5-6; *Shen Bao* 2040, December 16, 1878, 3-5; *Da Qing Dezong Jing (Guangxu) Huangdi Shilu*, 60: 831a-831b.

Governor Mei Qichao to investigate the responsibilities of Neng Changfu and Zhu Mingliang.⁵³⁸ While the result of this case remains unknown, it suggests that the politics of labelling consistently appeared in the persecution of roaming braves. Both authorities and ordinary people presumed that roaming braves were felony offenders. They particularly could not bear that these braves sometimes served as military soldiers and sometimes acted as bandits. Such sentiment enabled local officials to manipulate the truth during the judicial process. The summary execution policy also allowed the authorities to make up achievements in the reports to higher officials.

Moreover, while a large portion of disbanded braves wandered around by themselves without joining any organization, many of them turned to organized groups to seek safety and make a living. The majority of these organizations derived from the need for mutual help. The practices of these popular organizations did not necessarily result in revolt and rebellion.⁵³⁹ Nevertheless, in keeping with the trend of increasing braves and social unrest, brotherhood societies were inevitably involved in local conflicts and illegal activities, including banditry, rebellion, and later on the revolution that facilitated the fall of the dynasty.

⁵³⁸ *Shen Bao* 1755, January 10, 1878, 5-6; *Shen Bao* 2040, December 16, 1878, 3-5.

⁵³⁹ Daniel Overmyer, *Folk Buddhist Religion: Dissenting Sects in Late Traditional China* (Cambridge: Harvard University Press, 1976); David Faure, "Secret Societies, Heretic Sects, and Peasant Rebellions in Nineteenth Century China," *Journal of the Chinese University of Hong Kong* 5, no. 1 (1979): 189-206; David Ownby, *Brotherhoods and Secret Societies in Early and Mid-Qing China* (Stanford: Stanford University Press, 1996); David Ownby, "Chinese Hui and the Early Modern Social Order: Evidence from Eighteenth-Century Southeast China" in *"Secret Societies" Reconsidered: Perspectives on the Social History of Early Modern South China and Southeast Asia*, ed. David Ownby and Mary Somers Heidhues (Armonk: M.E. Sharpe, 1993), 34-67; Jean Chesneau, "Secret Societies in China's Historical Evolution", in *Popular Movements and Secret Societies in China, 1840-1950*, ed. Jean Chesneau (Stanford: Stanford University Press, 1972), 6-7. As David Ownby points out, many brotherhood organizations had names and they were not a secret to authorities and local communities. See David Ownby, *Brotherhoods and Secret Societies in Early and Mid-Qing China*, 2-3.

One of the most significant phenomena was the fast spread of Gelaohui and the large number of braves it recruited following the fall of the Taiping Kingdom.⁵⁴⁰ The Gelaohui was based on the centuries-long tradition of local organizations among peripheral groups and ethnic minorities in Sichuan, Hunan, and Hubei. The predecessor of this organization incorporated a wide range of resources from predatory groups in the eighteenth century, and then in the mid-nineteenth century it became known as Gelaohui.⁵⁴¹ Although the Gelaohui had developed certain hierarchical structures and specific religious rituals, it had a relatively high level of flexibility in terms of organization and activity.⁵⁴² Members could move and spread their business to other regions. This was particularly favourable to roaming braves, who had been used to a life of relocation and changing identities. Braves usually moved and acted together with their closest brothers in the organizations. They moved from one place to another in order to find new sources of profit and escape government persecution. Gelaohui members spread around all kinds of places, including cities, villages, mountains, and river ports. Their actions also varied. Some of them conducted illegal trade and others engaged in

⁵⁴⁰ Liu, “Xiangjun yu gelaohui”; Wu Shanzhong 吳善中, “Kemin, youyong, yanxiao: jindai changjiang zhongxiayou, yunhe liuyu huidang jueqi beijing xintan” 客民•游勇•鹽梟—近代長江中下游、運河流域會黨崛起背景新探 (Guest People, Roaming Braves, and Fierce Salt Smugglers: A New Study on the Rise of Secret Societies in the Middle-Lower Yangtze Region in Modern Times), *Yanzhou daxue xuebao* 揚州大學學報 (Journal of Yangzhou University) 1999 no. 5: 29-36.

⁵⁴¹ The origin of Gelaohui remains debatable. For a sophisticated hypothesis, see Barend J. ter Haar, “The Gathering of Brothers and Elders (Ko-lao hui): A New View,” in *Conflict and Accommodation in Early Modern East Asia: Essays in Honour of Erik Zürcher*, ed. Leonard Blussé and Harriet Zurndorfer (Leiden: E.J. Brill, 1993), 259-83.

⁵⁴² For the organization of Gelaohui, see Barend ter Haar, “The Gathering of Brothers and Elders (ko-lao hui): A New View”; Youn Eunja 尹恩子, “Qingdai gelaohui shantang kao: shantang zuzhi de fazhan yu dengji jiegou de bianqian” 清代哥老會山堂考—山堂組織的發展與等級結構的變遷 (Organization Expansion and Changes of Hierarchy Structure of the Gelaohui in the Qing Dynasty), *Qing shi yanjiu* 清史研究 (Studies in Qing History) 2010 no. 1, 27-36.

robbery.⁵⁴³ Sometimes they acted just like normal vagrants in the hope that the authorities would take mercy on them and provide famine relief or accommodation.⁵⁴⁴

In 1876, the Shitai County Magistrate arrested a group of six people whom he perceived to be ne'er-do-wells (*wulairen* 無賴人). Some of these people were craftsmen. Others ran small businesses. The magistrate commanded his subordinates to search their house, and they discovered a white cloth printed with the words “Daxing Mountain Songbo Tang” (*Daxingshan songbo tang* 大興山松柏堂). Seizing on the word *tang*, the magistrate held this group to be “Gelao sect bandits.” According to their confession, the group leader, Xu Gui (徐貴), was previously a brave in the military. He reportedly gathered several roaming braves to join the sect, asking all his followers to listen to his words and the commands from their headquarters on the Mountain of Nine Dragons (Jiulongshan 九龍山; Jiulong Mountain), a mountain at the borders of Zhejiang, Jiangxi, and Fujian provinces where many bandits and local marginalized groups gathered. Xu further confessed that he avoided using the term “Gelao” in the group’s name because this term was highly sensitive. He stated that his group had created a secret way of communication, using invisible ink that could only be seen after immersion in alcohol.⁵⁴⁵

This arrest quickly caught the attention of the *Shen Bao*. After a close comparison of the cases, the reporter stated that the slogans and commanding system of the two groups were very different. The members of Xu’s group were mere pickpockets and petty pilferers and should not be treated in the same way as sect bandits were treated.

Unfortunately for Xu and his followers, the magistrate did not further investigate this

⁵⁴³ *Dongfang Zazhi* 3:1 (1906), 1-5.

⁵⁴⁴ *Shen Bao* 6287, October 20, 1890, 1.

⁵⁴⁵ *Shen Bao* 1334, August 30, 1876, 2.

case. The six convicts were summarily executed after the county yamen received the command from the provincial government. The reporter sighed over such quick execution for a case that should have been re-tried. He supposed the strict punishment was to deter subversives, as rumours spread so fast that the Gelaohui were quickly informed of any summary execution.⁵⁴⁶

To a large extent, Gelaohui could not be perceived as a unified or homogeneous group because its divisions were involved in different regions' local politics and social relations. Local officials and local elites conveniently labelled their opponents as sect bandits. This label clouds our understanding of the variations in different regions and their changes over time. During the Taiping Rebellion, the intensified local struggles made competing groups incriminate the other side as Taiping rebels and sect bandits. The term "Gelaohui" was also used distortedly during the post-Taiping era, particularly when the authorities intended to suppress a group that they deemed as a threat. Similarly, the label of "roaming braves" was casually and arbitrarily applied throughout the last decades of the Qing dynasty. People suspected all sorts of strangers, including those enrolled in militaries and even those conventionally labelled as "Hakka" people. The population growth after the eighteenth century created a large flood of vagrants, migrants, and "shed people" (*pengmin* 棚民), particularly in Zhejiang, Jiangxi, and Fujian provinces.⁵⁴⁷ The

⁵⁴⁶ *Shen Bao* 1334, August 30, 1876, 2.

⁵⁴⁷ Stephen Averill, "The Shed People and the Opening of the Yangzi Highlands," *Modern China* 9 (1983): 84-126; Anne Osborne, "Barren Mountains, Raging Rivers: The Ecological and Social Effects of Changing Landuse on the Lower Yangzi Periphery in Late Imperial China," (Ph.D. diss., Columbia University, 1989), 66-70; Sow-Theng Leong, *Migration and Ethnicity in Chinese History: Hakkas, Pengmin, and Their Neighbors* (Stanford: Stanford University Press, 1997); Kenneth Pomeranz, "Re-thinking the Late Imperial Chinese Economy: Development, Disaggregation, and Decline, circa 1730-1930," *Itinerario* 24, nos. 3-4 (2000): 29-74; Wang I-Chiao 王一樵, "Tianxia zhi huan wei renman: Qingchao Jia Dao Qian yilai de pengmin wenti,

authorities clearly knew that many roaming braves did not commit serious crimes, but the increasing crimes forced them to take certain measures. Regional authorities continued to rely on summary execution, especially because of the increasing number of bandits, the emergence of revolutionaries, and the risky and costly conveyance of prisoners. The imperial court eventually adopted a severe approach after a series of debates on the policies regarding roaming braves.

Battles among Local Armed Groups

Since the Qing government commanded all militia and *baojia* to participate in the suppression of roaming braves, the battles inevitably involved excessive killing and even enhanced rivalries among local communities. This was particularly common during the Taiping Rebellion when villagers and braves—both organized and unorganized—constantly engaged in feuds and warfare. Local government did not always tolerate private suppression. It had at least to comprehend what was going on and why locals killed the suspects. In 1856, when the civil war was still at its height, local militia in Baihe County of Shaanxi Province brutally killed over ninety roaming braves in a battle. The county magistrate was astonished by the efficiency of the militia, but he exhorted the militants to refrain from indiscriminate killing.⁵⁴⁸ In 1859, villagers in Nankang Prefecture slaughtered four roaming braves and left the corpses at the residence of the Tang family. The Nankang prefect cautiously investigated this case because it seemed

shiren yilun yu guanfang zhengce” 天下之患為人滿——清朝嘉、道、咸以來的棚民問題、士人議論與官方政策 (Pengmin, Literati’s Responses and Government’s Policies in the Mid-Qing Dynasty) (PhD diss., National Taiwan University, 2013).

⁵⁴⁸ Gu Lu 顧騷, *Guangxu Baihe xianzhi* 光緒白河縣志 (Baihe County Gazetteer Compiled during the Guangxu Reign) (Taipei: Chengwen, 1969), 232.

that the villagers had planted the corpses and their motives for doing this to the Tangs remained unclear.⁵⁴⁹ Local officials clearly knew that many militias killed these braves not only for suppression but also for revenge or as part of private conflicts. In many cases, different branches of militias fought against each other, and their actions were not far different from those of bandits and roaming braves.⁵⁵⁰

In 1881, *Shen Bao* reported a case of banditry in eastern Zhejiang. As the reporter argued, ever since the large-scale disbanding of the army, braves existed everywhere, and they incessantly committed robbery and banditry. Many braves were essentially bandits, although they differed from the latter in that they drifted around and never stayed in one place. They sometimes gathered together calling themselves a militia and helped locals to resist against bandits, but they continued to disturb communities and exploit money from local people.⁵⁵¹ In 1889, *Shen Bao* posted another similar report, criticizing military braves for connecting with members of sects and boat bandits. The report argued “it was all because the militia organization taught these men unkind behaviours and gave them the skills to kill people.”⁵⁵² In some cases, both locals and government officials felt nervous when they saw a large group of military braves gathered together.⁵⁵³ Apparently, many locals and elites compared military braves and militias to those the militias were

⁵⁴⁹ Huang Tingjin 黃廷金, *Tongzhi Ruizhou fuzhi* 同治瑞州府志 (Ruizhou Prefectural Gazetteer Compiled during the Tongzhi Reign) (Taipei: Chengwen, 1970), 605.

⁵⁵⁰ See, for instance, Liu Xianshi 劉顯世, *Minguo Guizhou tongzhi* 民國貴州通志 (General Gazetteer of Guizhou Compiled in the Republican Period) (Chengdu: Bashu shushe, 2006), 4725-4726.

⁵⁵¹ *Shen Bao* 3007, September 14, 1881, 1.

⁵⁵² *Shen Bao* 5787, May 31, 1889, 1.

⁵⁵³ See, for instance, *Shen Bao* 942, May 25, 1875, 3-4.

supposed to suppress. These militants possessed legitimate power to kill, and no one dared to challenge them except for those with weapons and strong political resources.⁵⁵⁴

Moreover, some militia members did not return their weapons to the government, and they refused to disband their members after the task of suppression was completed. Many weapons were in the braves' possession. Some of these braves left their militia and used their weapons to rob local communities. Local government, having such uncontrollable collaborators, was embarrassed but had no better solution. In 1883, a native of Shanghai was robbed and stabbed by eight roaming braves. According to *Shen Bao*, these robbers acquired their swords from militias or the gradually accessible weapons market.⁵⁵⁵ In 1887, another robbery case broke out in southern Anhui. This time, over 160 roaming braves were involved. Their weapons were primarily from their previous militias.⁵⁵⁶

In general, the public not only supported but also expected the officials to sweep out the pugnacious braves. Newspaper reports reiterated the necessity of using summary execution for felony crimes.⁵⁵⁷ Thanks to the rise of news media, the popular sentiment against roaming braves and the vivid accounts of disbanded veterans were recorded together as both text and image. The famous *Dianshizhai Pictorial* (*Dianshizhai huabao* 點石齋畫報), a new Shanghai-based magazine, recorded several illustrations regarding the activities of roaming braves. In a drawing titled "Tiger and the Buffalo Monster

⁵⁵⁴ See, for instance, Sheng Yun 升允, *Guangxu Gansu xin tongzhi* 光緒甘肅新通志 (New General Gazetteer of Gansu Compiled in the Republican Period) (Nanjing: Fenghuang, 2011), 5729-5730.

⁵⁵⁵ *Shen Bao* 3600, April 23, 1883, 1.

⁵⁵⁶ *Shen Bao* 5047, May 7, 1887, 1.

⁵⁵⁷ See, for instance, *Shen Bao* 1594, July 6, 1877, 2; *Shen Bao* 2312, October 7, 1879, 3; *Shen Bao* 4871, November 5, 1886, 2; *Shen Bao* 4878, November 12, 1886, 12; *Shen Bao* 5669, January 27, 1889, 2; *Shen Bao* 8535, January 18, 1897, 1; *Shen Bao* 6517, June 14, 1891, 2.

Broke Out of the Cage” (*hu si chu xia* 虎兇出柙), the pictorial editor told a story about how roaming braves “spread around the villages and increased the incidents of robbery.”⁵⁵⁸ A group of robbers broke into and robbed a Beijing house. One of them even intended to rape a lady. The lady struggled and bit the robber on the right wrist. The next day, the family reported the case to the Beijing Gendarmerie, and the latter promised to investigate the case. After the Gendarmerie’s commander arrived in the house, the lady found that the bandits were among the troops. She told the commander that the one who intended to rape her was one of his soldiers, and asked him to check all the soldiers’ wrists. The rapist was then found, and the commander felt very embarrassed. He asked the family to conceal this scandal from the public. He then commanded his subordinates to conciliate the case and deal with the aftermath.



⁵⁵⁸ Wu Youru 吳友如 et al., *Dianshizhai huabao: Daketang ban* 點石齋畫報•大可堂版 (Dianshizhai Pictorial: Daketang Edition) (Shanghai: Shanghai huabao chubanshe, 2001), vol. 7, 77.

Figure 4.1. “Tiger and the Buffalo Monster Broke Out of the Cage.” Illustration from *Dianshizhai huabao*.

As the title of the illustration suggests, the editor asserted that the commander had allowed his bandit-turned-soldiers to “run out of the cage.” The editor stated,

Our military was built to battle against the bandits, not to hide bandits in the troops. Ever since the roaming braves spread around the villages, the incidents of robbery increased. The cases usually could not be tracked down, and the authorities still asserted that the offending braves had been disbanded. These braves were supposed to be the ones who captured bandits, but they committed banditry themselves....In this [house breaking and rape] incident, the commander neglected the problem beforehand and then intended to conceal the fact afterwards. The tiger and the buffalo monster had run out of the cage. Who should be responsible for this? 設兵以禦盜也，未有盜即藏於兵者。自遊勇散布四鄉，于是劫案日多，幾致莫可究詰；然猶曰此係已撤之兵也。乃明明緝盜之人，竟有為盜之事。..... 案此事，官既失察於前，復掩飾于後。虎兇出於柙，是誰之過歟？⁵⁵⁹

While the nature of roaming braves was not far different from those hired by the military and local militia, newspapers and popular narratives usually depicted them as

⁵⁵⁹ Wu, *Dianshizhai huabao: Daketang ban*, vol. 3, 182.

petty criminals. In an illustration entitled “The Escort Threw the Dart,” a group of roaming braves were roaming and hiding in the narrow ways and alleys. When an apprentice of a rice shop carried 80 yang dollars for buying goods, they came out and robbed him of the money. The apprentice cried for help. A street escort quickly came out and threw a dart at the robbers. The dart hit a robber and shot the money he carried out of his hand. The escort quickly took the money and returned it to the apprentice.⁵⁶⁰



Figure 4.2. “The Escort Threw the Dart.” Illustration from *Dianshizhai huabao*.

The scene of this incident resembled many other narratives. These braves drifted around and hid in small alleys. They looked like petty thieves and acted like aggressive robbers. All these braves looked sly, repulsive, and cowardly, while the escort was portrayed as muscular, upright, and sincere. They robbed on the street during the day and

⁵⁶⁰ Ibid.

fled away before the crowds. All these behaviours were hateful to the public. People could not believe these gangsters dared to commit crimes in such an impudent way. As I will discuss in the next section, the masses usually demanded timely justice against the roaming braves. Such sentiment resembled the dart of the escort, which, as the *Dianshizhai Pictorial* said, arrived at a “timely and appropriate moment.”⁵⁶¹

The militia was certainly one of the most stable collaborators of the authorities. In the broader trend of local militarization, the militia gained its legitimacy from both government and local society. However, its actions could not stay aloof from local politics and social relations. Sometimes, the militias appeared reluctant to suppress the groups the officials expected them to. The underlying cause varied from case to case, but the correlation between militia and other groups usually played a role, and the leaders of militants had to calculate what benefit they would gain from suppressing a targeted criminal. In an 1885 case in Fuzhou, a group of twenty to thirty roaming braves broke into a prison and rescued several criminals who had previously worked with them in the military. The nearest militia quickly learned of this incident. Having thought it was a feud between local groups, the militia decided not to take any action because, as its post officer stated, “it was unnecessary to interfere with matters among common people.”⁵⁶² The braves and prisoners then successfully fled. The local government had no choice but to set a price for capturing these criminals. No one knew if the officer’s statement revealed the major concern of the militia. Yet it was quite apparent that local armed groups might not actively involve themselves in suppression if the action could not

⁵⁶¹ Wu, *Dianshizhai huabao: Daketang ban*, vol. 3, 182.

⁵⁶² *Shen Bao* 4384, June 29, 1885, 2.

deliver any benefit and might even bring them troubles in terms of local politics and social relations.

Certainly, on most occasions militias suppressed roaming braves because of local defence. They had to do it because local government left the task to them and even reduced the number of formal troops. In the autumn of 1901, a Guangxi merchant shipped two hundred boxes of opium and tobacco from Liuzhou to Xiangzhou. When his ship approached the neighbouring Wuxuan County, a group of two hundred roaming braves came out and stole all the goods. The robbers also abducted the merchant. All these robbers carried Mauser rifles. No villager dared resist. When the county government heard of this, it felt helpless because more than half of the county's braves had been disbanded. Defence Officer Liang Jiazhi (梁家治) quickly contacted local militia leaders and ordered the two nearest militias, Changqing Militia (長慶) and Changshun Militia (長順), to prepare for defence along the way. The leader of Changqing Militia, Wu Ziqing (吳子卿), was assigned to watch the robbers' movements. For reasons unknown, the robbers encountered Wu and asked him to recruit porters to help them move the goods. Wu then quickly informed other militias. They hid in the places where robbers would bring their captured goods. Soon, these roaming braves appeared. The militias quickly grabbed a chance to attack them, but the enemy's fire was too intense. Liang and his fellows had only simple weapons, and they even had to use hand-to-hand combat. After a fierce battle, Liang and his fellows took back more than twenty boxes of goods. They detected the robbers' next destination, attacked them on the road, and took their guns. The powerful weapons helped the militia to kill a number of

braves. The rest of the gang fled and let the merchant go.⁵⁶³ The militias eventually defended their communities. Their soldiers were apparently outnumbered by their enemies, but they still managed to achieve victory.

Conclusion

From the battles against roaming braves, one can see how exceptional punishment was systematically sanctioned by the state, regional government, and local people. Originating as an expedient measure to address social problems and political upheaval, the institution gradually became a tool that expelled certain groups of people, including the braves that had long served as state's collaborator throughout the trend of local militarization. The extreme punishment and the widespread of men using force jointly constituted China's distinct trajectory of "local militarization" and the growing culture of rough justice. This culture, as this chapter argues, blurred the boundary between "legality" and "illegality" and further revealed how these two co-existed in the making of modern Chinese legal culture.

Moreover, the continued warfare facilitated the emergence of these negatively perceived groups, while the reaction of the state and society consistently extended their exclusion. The epidemic of organized and unorganized toughs legitimized the use of exceptional punishment, which had been applied so extensively that it appeared as if it were a regular procedure. The government's campaign reinforced the popular imagination against bandits and roaming braves. Newspaper reports further spread such

⁵⁶³ Di Fuwen 翟富文, *Minguo Laibin xianzhi* 民國來賓縣志 (Laibin County Gazetteer Compiled in Republican Period) (Nanjing: Fenghuang, 2011), 567-568.

ideas to many classes of people. While the state intended to achieve centralization through the standardized laws and procedures, the masses preserved their legal sensibility that sustained the exclusion under the new legal system. These influences jointly constructed Chinese rough justice and differentiated China's trajectory from many other countries. During the Nationalist era (1927–49) and the early decades of the People's Republic of China, summary execution became an important part of political propaganda and mobilization, structurally shaping popular sentiment for the use of violence or quick execution against politically labelled villains or "society's enemy."

Chapter 5: The Dilemma of Public Opinion: The Case of Shen Bao

If the government tolerates the kidnapper-bandits and finds no heart to kill them simply because it intends to show its great mercy, such consideration might be said to be reasonable. However, if such tolerance of kidnapper-bandits causes good people to nurse a grievance, swallow their complaints, and even have nowhere to make a complaint, how can we accept this practice as a model? When Zichan governed the State of Zheng, he adopted severe punishments. When Zhuge Liang governed Shu, and Wang Meng governed Qin, they all adopted severe measures. Did they not want to win a reputation for benevolence? It was the circumstances of their time that prevented them from being benevolent. Now our Prefect Wang knows very well about this. Therefore, when he deals with the cases where other officials tended to be lenient to the criminals, he alone could make resolute decisions to punish one to warn a hundred others. As a result, those who tend to act like parents of their people all learn to have a heart like Prefect Wang's. 夫輕縱拐匪，不忍置之於死，過示寬大之恩，猶可言也。輕縱拐匪，而使良民飲恨吞聲，無從控訴，豈可以為訓乎？子產之治鄭也，以猛。武侯治蜀、王猛治秦，亦皆用嚴。彼豈不欲博寬大之譽哉？勢有所不可也。王太守深知此意，故於他人所略不惜意者，獨能毅然斷決，以為懲一儆百之計。顧安得父母斯民者，盡以王太守之心為心歟。---*Shen Bao* (May 29, 1893)⁵⁶⁴

During the last decades of the Qing dynasty, the emergence of newspapers was one of the most significant phenomena in Chinese society. The new media not only introduced Western culture and knowledge but also offered a platform for both the populace and the new class of journalists to express their own points of view. Various ideas then spread among the populace through the production and circulation of newspapers. In the reports about summary execution, people expressed competing views

⁵⁶⁴ *Shen Bao* 7264, July 12, 1893, 1. Dates here correspond to the lunar calendar: May 29, 1893 (the nineteenth year of Guangxu's reign) in the lunar calendar converts to July 12 in the Western calendar.

about the use of rough justice. On the one hand, despite the continued concerns over the treatment of human life, both the masses and educated elites demanded quick justice in the midst of turbulence and rapid militarization. On the other hand, the rough procedure of summary execution frequently resulted in wrongful judgments and triggered political criticism and even protest. Both views had long existed in Chinese literature and legal culture. However, it was during this period—when domestic turbulence and foreign influences both impacted society—that the tensions between these views were extended and facilitated.

The rise of newspapers shaped public opinion in a profound way. The new media empowered people to obtain information in a timely and rapid fashion. It also allowed them to comment on the government and, more importantly, to influence or dialogue with their peers or with reform-minded intellectuals within the nation. From newspaper reports on summary execution, one can see a complex interaction between the state, society, and the media. This interaction is a key factor in the formation of public opinion regarding the judicial process. As this chapter argues, it was this complex interaction together with the rapidly changed social and political circumstances that constantly shaped views regarding the practice of summary execution.

In this chapter, I use the reports of the *Shen Bao* (申報, or *Shanghai News*), the largest Chinese-language newspaper during the late Qing period, to analyze the formation of public deliberation on the procedure of quick execution.⁵⁶⁵ In the first section, I discuss the overall view of *Shen Bao* on summary execution. During the founding years, the

⁵⁶⁵ For a systematic study of the operation of the *Shen Bao* and its interaction with Chinese culture and the public sphere, see Barbara Mittler, *A Newspaper for China?: Power, Identity, and Change in Shanghai's News Media, 1872-1912* (Cambridge: Harvard University Asia Center, 2004).

newspaper extensively cited the reports of the government-sponsored *Peking Gazette* (*Jing Bao* 京報). These reports inevitably contained official perspectives, which deemed it necessary to use extreme punishment and expedient procedure in the cases of bandits and rebels. Roughly after 1876, *Shen Bao* increased the number of original reports on summary execution. Most of the reports were similar to the official announcement, viewing such expedient punishment as a way to satisfy both people's demand for justice and the ideals of strengthening state law and restoring order.

In the second section, I explore how a wrongful judgment and unjust case (*yuan'an* 冤案) was discussed by the *Shen Bao*. The case examined here is called the Sanpailou Case (三牌樓, 1877). Using a close examination of the newspaper's reports, I find that the newspaper was primarily concerned about the discovery and punishment of the "real murderers" (*zhen xiong* 真兇), which, in this case, were the officials who intentionally incriminated innocent people and executed them on trumped-up charges. A concern over the roughness of the military procedure did exist in the newspaper's comment, but the journalists did not deny the significance of summary execution, particularly in the cases of banditry and serious homicide. As a result, the journalists claimed that it was necessary to distinguish light robbery from serious rebellion and banditry, in which the latter should be subject to summary execution. To a great extent, the newspaper's primary concern was to arrest and punish quickly the real murderers—a view that was common among the populace—rather than abolishing the established military justice system.

The final section offers an in-depth exploration of a Ningbo riot that shows how both government and society demanded quick justice and rejected the reform that

bestowed legal rights to criminal defendants. It was such sentiments and the government's demands that brought the practice into the reform period, when the practice of summary execution and the co-existence of legal and illicit forces continued to structure politics and legal culture in Chinese society. Here, as my analysis suggests, the reports were primarily about the disturbance and recovery of local order rather than the use of summary execution. The newspaper did not sympathize with the robber whose vicious act had almost killed the victim. On the other hand, it did not support the masses' protest because it caused disturbance and even caused tension between the administrative and judicial branches. The view of *Shen Bao* revealed that the journalists and the general public demanded the restoration of order while also seeking proper punishment of the convicts.

Competing Views on Rough Justice: Shen Bao's Reports at a Glance

From the first half of the nineteenth century onward, missionaries and merchants brought their own newspapers to China in order to introduce Western culture or promote their business. The number of Western newspapers gradually increased following the Qing's defeat in the Opium War. However, there were only a few Chinese-language newspapers, including the Shanghai-based *Shanghai Xinbao* (上海新報), covering events in Chinese society. Seeing this phenomenon, Ernest Major (1841–1908), a British businessman, founded *Shenjiang Xinbao* (申江新報) and later abbreviated the title to *Shen Bao*. The purpose of initiating this new media, according to *Shen Bao*, was neither promoting foreign countries and enterprises nor praising China while denouncing other nations. Instead, the main purpose, it claimed, was to “persuade the state to remedy its

problems and expect it to regain its strength” (*quan guo shi qi chu bi, wang qi zhenxing* 勸國使其除弊，望其振興).⁵⁶⁶ In order to collect the most updated news of Chinese society, Major hired several Chinese reporters. The newspaper aimed to comment on major social and political issues within the nation. It also strongly criticized corrupt and incompetent officials and provided suggestions for the improvement of politics and society. Based in Shanghai, the newspaper had extensive coverage of news from Zhejiang and Jiangsu. However, the reports were not restricted to these two provinces. Many reporters went to remote localities and built wide connections with local informants to acquire the most accurate information. It was this unique style that made the *Shen Bao* distinct from other media. It gradually spread from Shanghai to other coastal regions and even to the hinterlands. The intended readership included merchants, intellectuals, and ordinary people. With its wide popularity and long period of circulation (1872–1949), *Shen Bao* became the largest Chinese-language newspaper of its time and had a strong impact on Chinese culture and politics.

While the newspaper frequently criticized the incompetence of government, it did not fiercely challenge the practice of summary execution particularly in cases of banditry. This was primarily because China was going through a turbulent time. The Taiping Rebellion had seriously damaged the most prosperous provinces of the nation. Bandits and robbers continued to wander around following the defeat of the Taiping. These made the general public further fearful of the chaos and supportive of repressive measures against unlawful subjects. *Shen Bao* also had to consider the views of its readers. Although it intended to change the nation by commenting on news and criticizing corrupt

⁵⁶⁶ *Shen Bao* 1061, October 11, 1875, 1–2.

officials, it still had to reflect the general expectations regarding the sweeping away of the widespread villains.

During its founding years, *Shen Bao* usually cited the government's statements in its reports on summary execution. A large number of imperial edicts, governors' memorials, local officials' announcements, and reports from the government-sponsored *Peking Gazette* were excerpted in *Shen Bao*. Since these were government and official statements, they primarily expressed official attitudes toward the executions of outlaws. Many negative terms about the executed criminals thus appeared, including "even death cannot atone for the offence" (*zui bu rong zhu* 罪不容誅 or *sha bu bi gu* 殺不蔽辜),⁵⁶⁷ "the offender is guilty of the most heinous crimes" (*zui da e ji* 罪大惡極),⁵⁶⁸ and "the crime is not tolerated by the law" (*wangfa suo bu rong* 王法所不容).⁵⁶⁹ The reports also suggested that these executions "manifest the fundamental spirit of the laws of our country" (*yi zhang guo xian* 以彰國憲),⁵⁷⁰ "make the public feel vigilant and prudent" (*yi zhao jiongjie* 以昭炯戒),⁵⁷¹ and "make the people extremely happy" (*yi kuai renxin* 以快人心).⁵⁷² In citing these government statements, *Shen Bao* extended the official discourse about bandits and reinforced the legitimacy of extreme punishments for these outlaws.

Approximately after 1876, *Shen Bao* started to increase the number of original reports on summary execution cases. While the government's announcements still

⁵⁶⁷ *Shen Bao* 115, September 11, 1872, 3–4; *Shen Bao* 296, April 17, 1873, 3–4; *Shen Bao* 780, November 11, 1874, 4–5.

⁵⁶⁸ *Shen Bao* 735, September 19, 1874, 3–5; *Shen Bao* 901, April 4, 1875, 5–6.

⁵⁶⁹ *Shen Bao* 233, February 3, 1873, 1.

⁵⁷⁰ *Shen Bao* 115, September 11, 1872, 3–4; *Shen Bao* 709, August 20, 1874, 4–5.

⁵⁷¹ *Shen Bao* 105, August 30, 1872, 3–4; *Shen Bao* 249, February 21, 1873, 3–4; *Shen Bao* 372, July 15, 1873, 3–4; *Shen Bao* 872, March 4, 1875, 3–4.

⁵⁷² *Shen Bao* 758, October 16, 1874, 4–5; *Shen Bao* 945, May 28, 1875, 4–5.

constituted a high percentage of the coverage, the editors gradually increased the percentage of their own reports. The newspaper's original reports started to boom around 1883 and peaked in 1890. The increased first-hand observations from journalists and informants enabled *Shen Bao* to produce its own reports. Most reports expressed *Shen Bao*'s support for the practice of summary execution. Many reports reflected popular ideas of retribution and justice, reiterating that bandits and robbers deserved severe punishment. In an 1889 report on the summary execution of robbers, the journalists stated that "the net of Heaven has large meshes, but it lets nothing through" (*tianwang huihui, shu er bu lou* 天網恢恢，疎而不漏).⁵⁷³ In an 1897 report on the summary execution of a Shanghai bandit, the writer also defended the necessity of "using severe punishment to stop serious offence" (*yi bi zhi bi* 以辟止辟), claiming that the villain's activities would not last long because "the guilty is always punished under the law of heaven" (*tiandao bu shuang* 天道不爽).⁵⁷⁴

Like the authorities, the reporters believed that only severe punishment could eliminate riots and social unrest. From *Shen Bao* reports on "sect bandits," "notorious robbers" (*judao* 巨盜), and "wandering braves," one can locate how this medium reinforced sentiments about the suppression of these offenders. In the report of a banditry case, the journalist asserted that without the use of summary execution, the bandits would never be afraid and would not stop their crimes.⁵⁷⁵ Another journalist, reporting on the execution of a murderer, stated that the execution "made people extremely happy" and

⁵⁷³ *Shen Bao* 5669, January 27, 1889, 2.

⁵⁷⁴ *Shen Bao* 8535, January 18, 1897, 1.

⁵⁷⁵ *Shen Bao* 1594, July 6, 1877, 2.

the authorities could “warn a hundred people with a single execution.”⁵⁷⁶ On various occasions, the editors of *Shen Bao* explicitly supported the use of severe punishments on “rebellious people” (*luanmin* 亂民).⁵⁷⁷ Some reports even described the brutality in detail, in order to promote obedience to law and to deter the general public from such behaviour. In an 1891 report, for instance, the journalists wrote that offenders who attacked missionaries and Christian believers were beheaded and their heads stuck up on poles. After several days, the heads were surrounded by flies and were so smelly that people passing by had to cover their noses.⁵⁷⁸

Shen Bao's reports also described the psychological reactions of people watching an execution. An item on an 1886 execution of wandering braves reported that the people watching “put their hands on their foreheads and celebrated the execution.”⁵⁷⁹ In another execution of pirates, people “clapped their hands for joy” after hearing the news.⁵⁸⁰ Throughout the late Qing period, *Shen Bao* repeatedly described how summary execution made people extremely happy.⁵⁸¹ It also noted how summary executions set people's minds at rest in the midst of rampant crime waves and increasing turbulence in both politics and society.⁵⁸² An 1892 report on Jiangxi banditry suggested that the successful suppression of bandits “comforted the popular sentiment” (*wei yuqing* 慰輿情).⁵⁸³ Unlike

⁵⁷⁶ *Shen Bao* 2312, October 7, 1879, 3.

⁵⁷⁷ *Shen Bao* 4871, November 5, 1886, 2; *Shen Bao* 4878, November 12, 1886, 12.

⁵⁷⁸ *Shen Bao* 6517, June 14, 1891, 2.

⁵⁷⁹ *Shen Bao* 4600, January 31, 1886, 2.

⁵⁸⁰ *Shen Bao* 6498, May 26, 1891, 2–3.

⁵⁸¹ *Shen Bao* 4193, December 13, 1884, 2; *Shen Bao* 4399, July 14, 1885, 2.

⁵⁸² *Shen Bao* 4279, March 16, 1885, 2–3; *Shen Bao* 5795, June 8, 1889, 2–3; *Shen Bao* 5824, July 7, 1889, 2; *Shen Bao* 5826, July 9, 1889, 1.

⁵⁸³ *Shen Bao* 6992, October 8, 1892, 2.

the tedious language of the government's announcements, these reports vividly captured people's perceptions of summary execution.

However, *Shen Bao* at times expressed sympathy toward the suspects, particularly when the cases involved injustice. In the early 1870s, *Shen Bao* gave extensive coverage to the sensational case of “Yang Naiwu (楊乃武) and Xiaobaicai (小白菜)” and criticized officials for their unfairness in the adjudication of this case. The suspects were eventually found innocent, and the Qing government released the accused after several years of litigation. The case raised the reputation of *Shen Bao* and strengthened its righteous image among the media. Just a few years later, the newspaper criticized some officials for their excessive use of summary execution. As *Shen Bao* asserted, these officials, together with their subordinates, “treated human lives like grass.”⁵⁸⁴ *Shen Bao* suggested that officials should give suspects the chance of survival in cases of bandit suppression so that the innocent would not be wrongfully punished.⁵⁸⁵ The major concern of *Shen Bao* in these cases was to criticize any injustice and arbitrary judgment. Its support for the use of summary execution on felony offenders remained unchanged, because these offenders were intolerable and did not deserve sympathy.

During the last decade of the Qing dynasty, when the government initiated a series of judicial and institutional reforms under the name “New Policies” and revolutionaries challenged the legitimacy of Manchu rule, *Shen Bao* gradually incorporated some ideas of Western constitutionalism. It reported the latest news about the ongoing reforms, including debates about the introduction of Western institutions. Discussions on the new legal codes frequently appeared in *Shen Bao* coverage. The

⁵⁸⁴ *Shen Bao* 3013, September 20, 1881, 1–2; *Shen Bao* 3224, April 25, 1882, 1.

⁵⁸⁵ *Shen Bao* 3740, September 10, 1883, 1.

debates also triggered popular interest in the current laws of the Qing dynasty, including those governing punishment and criminal justice. In 1907, the summary execution of the female revolutionary Qiu Jin (秋瑾) shocked the entire nation. With great sympathy for Qiu Jin, *Shen Bao* extensively reported this incident and criticized the inappropriate dealings of Zhejiang officials. One of its major concerns was legal procedure and the prejudice of the government. *Shen Bao*'s report implied that the recent persecution of revolutionaries had resulted in some wrongful executions.⁵⁸⁶

In 1909, when the imperial court was discussing the reform of summary execution, *Shen Bao* condemned the Guangxi Provincial Administrative Commissioner Wang Zhixiang (王芝祥) for his abuse of summary execution and argued that “If even a higher judicial official acts like this, how can we expect any success of our constitutional reform?”⁵⁸⁷ In a 1911 report on a trial in which a new-style court tried a county magistrate, *Shen Bao* criticized the magistrate for abusing summary execution procedures in order to kill an innocent person.⁵⁸⁸ Apparently, the new ideas and judicial reforms had influenced *Shen Bao*. Nevertheless, in most of the cases involving summary execution,

⁵⁸⁶ For the interaction between public opinion, literature, and the Qiu Jin case, see Xia Xiaohong 夏曉虹, “Qiu Jin zhi si yu wan Qing de ‘Qiu Jin wenxue’” 秋瑾之死與晚清的‘秋瑾文學’ (The Death of Qiu Jin and the Late Qing Literature about Qiu Jin), *Shanxi daxue xuebao* 山西大學學報 (Journal of Shanxi University) 27 (2004), 1–8.

⁵⁸⁷ *Shen Bao* 13003, April 18, 1909, 2–3.

⁵⁸⁸ *Shen Bao* 13770, October 6, 1911, 12.

Shen Bao continued to celebrate the death of criminals⁵⁸⁹ and even published some fiction about the summary execution of bandits.⁵⁹⁰

In a broader sense, *Shen Bao*'s comments about summary execution, rooted in popular sentiment toward "injustice" (*yuan* 冤) and the support for the use of punishment in such "chaotic times" (*luanshi* 亂世), echoed popular ideas about justice and images of villains. The critiques of wrongful and arbitrary judgments did not contradict the support for severe punishment. Rather, these competing demands were integral parts of the idea that all villains should be detected and severely punished, a concept conveniently embodied in a phrase commonly used by *Shen Bao*, "correctly carrying out the right degree of punishment" (*mingzheng dianxing* 明正典刑).⁵⁹¹ Moreover, the large circulation of the newspapers enabled many people to obtain the most up to date information about crimes and punishments. Through reading about the execution of sect bandits and wandering braves, the existing imagination about these groups was reinforced and continued to sustain persecution against intolerable outlaws.

The Real Murderers Will Never Escape: The Sanpailou Case of 1877

Throughout the long history of China, wrongful judgments and unjust cases (*yuan'an* 冤案) had been a constant source of popular imagination about justice and

⁵⁸⁹ *Shen Bao* 12029, October 14, 1906, 2; *Shen Bao* 12220, April 30, 1907, 12; *Shen Bao* 13355, April 15, 1910, 12; *Shen Bao* 13540, October 17, 1910, 12; *Shen Bao* 13748, May 20, 1911, 12; *Shen Bao* 13819, July 29, 1911, 18; *Dongfang zazhi*, 1907, no. 10, 99–103.

⁵⁹⁰ *Shen Bao* 12964, March 10, 1909, 12; *Shen Bao* 13005, April 20, 1909, 26; *Shen Bao* 13020, May 5, 1909, 26; *Shen Bao* 13312, March 3, 1909, 26; *Shen Bao* 13315, March 6, 1910, 26–27; *Shen Bao* 13633, January 18, 1911, 26–27; *Shen Bao* 13748, May 20, 1911, 12.

⁵⁹¹ *Shen Bao* 4753, July 10, 1886, 9; *Shen Bao* 5537, September 17, 1886, 3; *Shen Bao* 10550, September 1, 1888, 3; *Shen Bao* 11008, December 10, 1903, 2.

incompetent government. The continued narration of unjust cases was closely related to the centuries-long judicial practice in which bribes, torture, and personal relations were endemic. Yet it was not merely a reflection of actual legal practice but also a structuring force behind the formation of Chinese legal culture. Due to its tortuous yet agitating storyline, tales of wrongful judgments and “unsettled cases” (*xuan'an* 懸案) became a vital source of literature. A number of literary works spread from one generation to another, including the legendary tales of Judge Bao (*Bao Gong* 包公) and *The Injustice to Dou E* (*Dou E Yuan* 竇娥冤).⁵⁹² Despite its fictional nature, the literary creation shared many characteristics with legal practice. While dynastic rulers constantly linked unfair justice with supernatural punishments and unusual disasters, many literary works also emphasized retribution for the unjust behaviours. Many tales were thus produced, including ones regarding the punishment of corrupt officials and ominous phenomena after biased trials and the execution of the innocent. The imagination of hell and underworld trials appeared in a variety of sources pertaining to religion, folk tales, and local histories. Both formal and informal spheres of legal culture constructed the ways people approached and responded to the ideas of justice and injustice.

It was in such circumstances that the idea of injustice was extensively used in the legitimization process in judicial practice. Litigants usually portrayed themselves as victims that had suffered injustice due to the vicious actions of the other side. In their

⁵⁹² For a thorough exploration of the tales of Judge Bao from a legal culture perspective, see Xu Zhongming 徐忠明, *Bao Gong gushi: yi ge kaocha Zhongguo falü wenhua de shijiao* 包公故事: 一個考察中國法律文化的視角 (Judge Bao Stories: A Perspective from an Inquiry into Chinese Legal Culture) (Beijing: Zhongguo zhengfa daxue chubanshe, 2002). For the injustice to Dou E, see Gladys Yang and Xiangyi Yang trans., *Selected Plays of Guan Hanqing* (Beijing: Foreign Language Press, 1979). The play is titled “Snow in Midsummer.”

petitions, disputants usually resorted to the authority of Heaven, requesting the parent-like officials to uphold justice for them by making a proper judgment that met the Heavenly Principles (*tianli* 天理) and the state's law (*guofa* 國法). The expression of divine justice was deeply embedded in both formal and informal aspects of Chinese legal culture. As Paul Katz points out, judicial ritual and various elements of the legal culture of divine justice had “reverberated” with one another, mutually shaping a wide “judicial continuum” that contained different options for achieving legitimization and dispute resolution.⁵⁹³ As Terada Hiroaki argues, the culture of redressing an injustice was an integral part of what can be understood as an expression of right in the modern Western legal system.⁵⁹⁴ During the late imperial period, the practice of redressing injustice was closely associated with the increased number of demonstrations and the rise of local powers. During the mid-Qing period, the new channels of judicial process, particularly the capital appeal system, reinforced the culture of claiming injustice.⁵⁹⁵ To sum up, before the introduction of modern newspapers, the idea of wrongful judgment and the culture of redressing injustice had been a significant part of Chinese legal culture.

Although in the early years *Shen Bao* extensively cited the government's statements on summary execution, it had noticed some cases where the innocent were

⁵⁹³ Paul Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (New York: Routledge, 2009), xi, 7, 47–60.

⁵⁹⁴ Terada Hiroaki 寺田浩明, “Quanli yu yuanyi” 權利與冤抑 (Rights and Wrongful Judgment), in Shiga Shūzō 滋賀秀三, Terada Hiroaki, Kishimoto Mio 岸本美緒, and Fuma Susumu 夫馬進 eds., *Ming-Qing shiqi de minshi shenpan yu minjian qiyue* 明清時期的民事審判與契約 (Civil Justice and Civil Contract in the Ming-Qing Period), trans Wang Yaxin 王亞新 (Beijing: Falü chubanshe, 1998), 191–265.

⁵⁹⁵ Li Dianrong 李典蓉, *Qing chao jingkong zhidu yanjiu* 清朝京控制度研究 (Capital Appeals during the Qing Dynasty) (Shanghai: Shanghai guji chubanshe, 2011); Ho-fung Hung, *Protest with Chinese Characteristics: Demonstrations, Riots, and Petitions in the Mid-Qing Dynasty* (New York: Columbia University Press, 2011).

executed without just and impartial process. In December 1877, when the Qing court continuously resorted to summary execution in the persecution of conveniently defined bandits, a murder case happened at the Sanpailou (三牌樓) in Nanjing.⁵⁹⁶ In the morning of a snowy day, the corpse of an unknown male appeared on the street. The body was covered with several cuts and wounds. The victim's pants and shoes were removed while the upper part of the body was dressed in a padded cotton robe. No one knew the background of the victim and no clue showed the motives of the perpetrators. The Shangyuan county magistrate, Lu Siling (陸嗣齡), came to the scene and examined the body. He commanded local constables to wait at the scene in case the relatives of the victim came to take the corpse. Yet over several nights, no one came to identify the body. The county magistrate had no choice but to prepare a coffin and bury the victim. He ordered the government runners to continue the search for perpetrators, but no one found any suspect and the case remained unresolved.

⁵⁹⁶ Previous studies of this case tend to focus on the legendary investigation conducted by Xue Yunsheng. Only a few studies shift the focus to the process of the entire incident. Du Jin's (杜金) study represents the most comprehensive exploration of this case. However, while it intends to examine the facts and legal reasoning regarding this case, it does not explore how the changing process of the investigation reveals the complex feelings and imaginations toward the practice of summary execution and its linkage with the idea of justice. As a result, Du's study neglects the complex process of the making of this case in both official and popular narratives—a dimension that his study claims to explore with an attempt of discovering the “real murderers.” See Du Jin 杜金, “Yuanyu yu pingfan: Qingmo Jiangning sanpailou an gouchen” 冤獄與平反: 清末江寧三牌樓案鉤沉 (Unjust Verdict and Rehabilitation — The Three Arches Case of Jiangning Prefecture and Other Episodes in Chinese Legal Cultural History), in Xu Zhongming 徐忠明 and Du Jin, *Shei shi zhenxiong: Qingdai ming'an de zhengzhi falü fenxi* 誰是真凶: 清代命案的政治法律分析 (Who Is the Real Murderer: A Political and Legal Analysis of Manslaughter Cases in the Qing Dynasty) (Guilin: Guangxi shifan daxue chubanshe, 2014), 192239.

The *Shen Bao* reporters noticed the case about three months later. On January 11, 1878,⁵⁹⁷ *Shen Bao* reported that the county magistrate had not found any clues in the Sanpailou case. It then immediately commented on the growing number of roaming braves in the Lower Yangtze region. It paired the case with the issue of disbanded braves and argued that the cause of these two things was “all because the new statutes prohibited the smoking of opium by camp soldiers and thus the number of disbanded braves increased” (*xiang jieyin xinli jin yingbing xishi yapian, gu geyong shen duo* 想皆因新例禁營兵吸食鴉片，故革勇甚多). The reporter sympathized with the braves who had no other way of living, but he was also concerned that the worsening local security following the spread of these braves would make ordinary people unable to sleep in their beds (*xiaomin zhen wo bu an xi ye* 小民真臥不安席也).⁵⁹⁸ There is no clue about whether *Shen Bao*'s report was affected by local rumours, but it reflected the way people thought about the case; namely, presuming that the murder must have been committed by wandering braves.

Now the viceroy of Liangjiang, Shen Baozhen (沈葆楨), intervened in the investigation. It remains unclear whether the case was reported to Shen through the regular review procedure, but Shen did hear about it and assigned his favourite subordinate, Hong Rukui (洪汝奎), to examine thoroughly this murder without any clues. No one knew why a murder of an anonymous man caught so much attention from the viceroy. The only possible reason, according to *Shen Bao*'s later report, was that the case happened in the provincial capital and that “a felony case like this with such severe

⁵⁹⁷ Again, dates here correspond to the lunar calendar: January 11, 1878 (the fourth year of Guangxu's reign) in the lunar calendar converts to February 12 in the Western calendar.

⁵⁹⁸ *Shen Bao* 1777, February 12, 1878, 2.

injuries and murder was really shocking to hear about” (*si ci zhongshang xie’an shu shu hai ren tingwen* 似此重傷血案，殊屬駭人聽聞).⁵⁹⁹

Hong asked Assistant Regional Commander, Hu Jinchuan (胡金傳), to look for suspects. After Hu took over the case, the investigation proceeded incredibly quickly. Within a few days, Hu found a beggar in the area who reportedly claimed that a street pedlar—a little boy of unknown age—witnessed the crime. Almost at the same time, the pedlar came to the authorities and stated that he saw the corpse on the street that morning. Three men stood beside the corpse, and one of them looked like a monk. They warned the pedlar not to meddle in their business, so the little boy fled. Based on this report, Hu sent a troop to Cat Ear Mountain (*Maoershan* 貓耳山 or *Miaoershan* 妙耳山) and captured a monk. He also quickly arrested a butcher with the surname Qu. The rumour of the arrest quickly spread to the community and then to the *Shen Bao* reporter.

On February 24, 1878, *Shen Bao* made a report on the murder case based on hearsay from Nanjing. The report was titled “the case of moving a corpse on snowy ground” (*xuedi yi shi an* 雪地移屍案).⁶⁰⁰ In the report, the victim’s name still remained unknown, but the rumours suggested that the victim knew the perpetrators before his death. The victim was reportedly a butcher who had known Qu for a while. One day, they met beside a river. The victim had just received 100 or 200 gold coins from a transaction. Qu saw it and asked the victim to lend him some money. He was refused by the victim and was thus motivated to kill him. Qu then invited the victim to a monastery on Cat Ear Mountain. There, they had wine and a feast and Qu asked his monk friend to make the

⁵⁹⁹ *Shen Bao* 1814, March 27, 1878, 2.

⁶⁰⁰ *Shen Bao* 1814, March 27, 1878, 2.

victim groggy. The victim detected their motive, made an excuse and escaped. The suspects then ran after him. They chased him all the way to a bamboo garden at Sanpailou, where they slaughtered him and robbed all his valuables. The pedlar reportedly passed by the scene and witnessed the suspects. Qu intended to kill him, but the monk said there was no need to fear such a little boy. They then asked a Daoist priest to move the corpse three hundred steps away to a patch of snowy ground and leave it there. The story quickly spread to Hong Rukui through the beggar and pedlar. Hong immediately arrested the suspects and interrogated them. No other suspects were found at this point and the authorities seemed to be clear that the three were the ones who committed the crime.

While its primary base was in Shanghai, *Shen Bao*, with the help of its informants from Nanjing, was able to comment on this unusual case. Rumours revealed that the suspects were severely tortured during the investigation. Their legs were pinched and broken by the torture instruments. Yet some facts remained unclear even to the authorities. In its report, *Shen Bao* lamented that “the suspects may have been unjustly treated, and it remains unknown if there was any miscarriage of justice” (*qizhong huo you yuanyi, yi wei ke ding* 其中或有冤抑，亦未可定). It listed four questionable points regarding the investigation. First, there was no evidence of the stolen property. Second, while the suspects had confessed their crimes, why was there no mention of the victim’s name and native place if the suspects had known him for a while? Third, why did the little boy appear at a desolate place so late at night? Fourth, who did the pedlar talk to regarding the things he witnessed, and what did the beggar say about the crime? With all

these doubts, the *Shen Bao* reporter suggested that the officials calmly separate the interrogations of the different suspects and avoid the use of torture.⁶⁰¹

The *Shen Bao* report apparently intended to rectify the already problematic investigation. However, only a few days later, the reporters heard that the suspects had been summarily executed before their report was published. *Shen Bao*'s reports were primarily based on the hearsay from Nanjing. The information had probably been delayed for some reason, but now *Shen Bao* was able to correct its report based on some new hearsay information. According to their informant, the Nanjing authorities paraded the three convicts on February 24. They then quickly executed Qu and the monk in front of the masses. The ears of the Daoist priest were cropped off, and he was detained at the county prison. As to the murder, the story now was slightly different. The monk had suggested that Qu chop off the victim's penis to pretend it was rape instead of robbery. Qu and the monk each got over 30 *yuan*, while the priest got only 18 *yuan* and spent only 2 *yuan* before the arrest. No further information revealed why the three convicts received different punishments, but a probable reason was that the priest did not join in the slaughter. *Shen Bao* at this point was still not informed of the names of the convicts. They only knew that Qu's surname was Qu (屈) instead of Qu (瞿). Nanjing locals may have known the names of the other two suspects, but this did not matter because the main convicts had been executed. *Shen Bao* did not comment further on the suspicious investigation. It only made a brief title for the report: "the case of moving a corpse on the snowy ground is now closed" (*yi shi an jie* 移屍案結).⁶⁰²

⁶⁰¹ *Shen Bao* 1814, March 27, 1878, 2.

⁶⁰² *Shen Bao* 1820, April 3, 1878, 2.

Despite the problematic investigation, there was no protest and critique regarding the execution. The suspect's relatives seemed not to have argued about the investigation. The public never even knew the victim's name. Since the case was not related to taxes or incompetent officials, the public had no grounds to initiate a demonstration. The public had long supported the suppression of villains, and the government had quickly executed the convicts in front of the masses. Now the case had temporarily come to an end. Even the reporters, who had previously expressed their doubts, had no response to the immediate execution.

Three years later, there was suddenly a surprising turning point in the case. On September 3, 1881, the viceroy of Liangjiang, Liu Kunyi (劉坤一), submitted a request to dismiss Hu Jinchuan from his post. The reason, according to Liu, was that Hu might have instigated and colluded in the investigation of previous cases.⁶⁰³ Liu seemed to have reported this to the throne, because the emperor quickly approved the request. On September 15, the government's newspaper *Peking Gazette* posted a memorial submitted by Liu. In the memorial, Liu stated that the Nanjing *baoji* bureau recently arrested a thief called Li Dafeng (李大鳳). Li confessed that a group of criminals led by Shen Baohong (沈鮑洪) had previously killed a man. The plot of the case resembled the Sanpailou case. The authorities thus suspected that Hu instigated the verdict.⁶⁰⁴ Now it was too late to reverse the outcome because the three convicts had been executed three years earlier. But the imperial court was seriously concerned not only about the fact that Hu abused his

⁶⁰³ *Qing shilu* 清實錄 (Beijing: Zhonghua shuju, 1986), *Dezong shilu*, 136: 951b–952a, June 26, GX7 (1881; GX = Guangxu reign).

⁶⁰⁴ *Shen Bao* 3072, November 18, 1881, 3.

power but also the way he misled the state and the public. Liu had to investigate this scandal carefully because it had become a heated issue among the Nanjing people.⁶⁰⁵

The rumours soon appeared in *Shen Bao*. On September 11, the newspaper reported the new discovery in this case. One night, a man robbed a nunnery. After he fled to the street, he suddenly met a dark shadow flashing ahead of him. He then fainted and fell to the ground. The patrol guards passed by and thought him suspicious. They then arrested him and sent him to the General Bureau of Baojia. Expectant Circuit Intendant (*houbudao* 候補道) Wu Bangqi (吳邦祺) interrogated the arrested man. The thief confessed that he had attempted to borrow money from his gangster friend Shen Baohong, who was nicknamed “One Shot Red” (*yi pao hong* 一炮紅). He spent several days in One Shot Red’s residential area, Saigong Bridge, in order to find him and borrow the money. He used all his allowance for the journey, so he decided to rob someone.

Learning that there was such a villain in his jurisdiction, Wu quickly sent his soldiers to search for One Shot Red. They soon located him and investigated his crimes. One Shot Red confessed that he was primarily a thief and he was also involved in human trafficking. He had committed several murders, including the one at Cat Ear Mountain. In his confession, One Shot Red stated that he murdered the victim out of revenge for his friend whose concubine was abducted by the victim. He and his friend stabbed the victim beside a river. They chopped the penis of the victim and placed it in his mouth. After the murder, One Shot Red raped the abducted woman and sold her to another person. The Expectant Circuit Intendant then brought him to the scene of the Sanpailou murder. He was able to describe the details of the crime and his statements perfectly matched the

⁶⁰⁵ *Shen Bao* 3056, November 2, 1881, 2.

evidence previously found. Facing such a scandal, the Viceroy found it necessary to either ban them or switch the posts of the involved officials to other localities. The authorities were seriously concerned about the dereliction of the officials and the potential discontent of the masses following the discovery of the new evidence.

In contrast, the *Shen Bao* report was primarily concerned with the former wrongful judgment and the eventual discovery of the real murderers. It stated that “perhaps the ghosts of the monk, Qu, and the victim were still wandering around without restlessly; they intended to let the thief to speak out the truth” (*dadi seng yu Qu ji sizhe zhi yuanhun busan, yu jie qiren yi gong* 大抵僧與屈及死者之冤魂不散，欲借其人以供). It also argued that the discovery of the real killer reflected that “the net of Heaven has large meshes, but it lets nothing through.”⁶⁰⁶

Now that the confession proved that the former charges were flawed and even trumped up, the newspapers got the chance to challenge fiercely the problematic process widely applied to various kinds of cases. Only two days after its report, *Shen Bao* published an article that criticized the government for overusing torture. While admitting the difficulty of avoiding torture, particularly in the case of heinous crimes, the reporter argued that the officials used torture because they presumed the guilt of the accused. Many suspects would rather die because the torture process was unbearable. This usually resulted in an irreversible outcome, particularly when the wronged were executed. Here, the reporter argued that the adjudicator used a little boy’s confession to kill two suspects without examining the identity of the murdered victim. It was suspicious that the two suspects had such deep hatred toward a man whose name remained unknown to them.

⁶⁰⁶ *Shen Bao* 3056, November 2, 1881, 2.

According to the previous practice, it was simply impossible to list the victim's name as anonymous in a final report for a murder case. The reporter further asserted that it was because the former viceroy, Shen Baozhen, placed particular emphasis on this murder case that his subordinate adjudicators—Hong Rukui and his men—“sought the quick closing of the case and a must-punish outcome” (*wenguan wuzai an zhi sujie yu zui zhi bide ye* 問官務在案之速結與罪之必得也). As a provincial capital, Nanjing certainly gained intensive attention from both authorities and the populace. However, as the *Shen Bao* reporter pointed out, it was such extensive caution—which urged local authorities to speed up the closing of the case—that ironically led to a rash and wrongful judgment (*buyi shenzhong zhi guo, jing bian er wei caoshuai* 不意慎重之過，竟變而為草率).⁶⁰⁷

At the same time, the viceroy was also facing challenges from the scandal. Most of the involved officers were working in his jurisdiction. While Shen Baozhen had passed away two years earlier, the primary adjudicators in the previous trial—Hong Rukui and Hu Jinchuan—were still active in Jiangsu Province. Now that the monk and Qu were not the real murderers, there must have been some problems in the trial conducted by Hu Jinchuan. However, according to Liu's memorial on November 2, Hu was “crafty and denied the charges against him” (*jiao bu chengren* 狡不承認). Hearing about the situation, the emperor commanded the viceroy to adopt a prompt and severe approach. On November 9, the emperor responded to Liu Kunyi's memorial, stating that Hong Rukui and Huai-an Prefect Sun Yunjin (孫雲錦) should be dismissed from their posts. He also approved Liu's request for the use of torture in the investigation of Hu Jinchuan,

⁶⁰⁷ *Shen Bao* 3058, November 4, 1881, 1.

which, ironically, was the method adopted by Hu that led to the miscarriage of justice.⁶⁰⁸ Except for Hu's confession, the authorities had collected most of the information. They now knew the name of the other murderer, Zhou Wu (周五). They also collected further details about the murder based on the confession of the murderers.

What is intriguing here is that the previous investigation was not only not released to the public but also unreported to the imperial court. The former viceroy, Shen Baozhen, presumed the murder was a battle between sect bandit groups, so he decided to go for the summary execution procedure. The procedure allowed governors to finalize execution without further reports. Even the current viceroy, Liu Kunyi, had to investigate all the involved officials and records in order to find out the truth. Based on the evidence found in the process of investigation, Liu now reported to the throne a detailed version of the story behind the former wrongful judgment. The three convicts in the previous trial were the monk Shaozong (紹宗), Qu Xueru (曲學如), and Zhang Keyou (張克友). The murdered victim was previously called Xue Chunfang (薛春芳), but now confirmed as Zhu Biao (朱彪). The pedlar's name was Fang Xiaogeng (方小庚). He admitted that his previous statement was a fabrication. He did not see the monk and the suspects. He was threatened by Hu Jinchuan to make the statement. Since the mandatory process required a witness to identify the suspects, Hu Jinchuan brought Fang to view the monk and Zhang Keyou beforehand. As a result, in the following interrogation, Fang quickly identified the suspects in front of Hong Rukui. Zhang Keyou was identified by Fang and severely tortured by Hu. According to the records, he confessed before the other suspects and thus

⁶⁰⁸ National Palace Museum (*Guoli gugong bowuyuan* 國立故宮博物院; Taipei), *Junjichu dang zhejian* 軍機處檔摺件, no. 119417; *Qing shilu*, *Dezong shilu*, 139: 990a-990b, November 9, GX7 (1881).

avoided the death sentence. Zhang's friend and the real murderers confirmed that Zhang was not present at the crime scene. All in all, the confessions presented by Liu Kunyi suggested that Hu's instigation and collusion led to the wrongful and tragic result.⁶⁰⁹

These details were not known to *Shen Bao* at this point. Except for imperial edicts and government announcements, the government records, including those regarding trials and investigations, were not supposed to spread to the public. This does not mean that people had no access to the trial. Many trials were open to the public, and the audience could take notes. This is why *Shen Bao* had to rely on informants and the reports of the government newspaper, *Peking Gazette*. On September 22, *Shen Bao* heard a local rumour saying that the viceroy had carried his official seal with him and visited the provincial capital for two consecutive days. No one knew what important things kept him there. According to the local hearsay, the masses were all guessing what was going on with the viceroy, and there were various versions of the rumours in the local community (*qunqing yichuai, chuanshuo buyi* 羣情疑揣，傳說不一).⁶¹⁰ Five days later, *Shen Bao* cited the *Peking Gazette*'s report on September 15. The report was posted almost two weeks earlier. There was nothing new to the people in Shanghai, except for the dismissal of Hu and the name of the primary murderer. Readers of the *Peking Gazette* and the newspapers that extensively cited the *Peking Gazette*, including the *North China Daily News* (*Zilin Xibao* 字林西報; previously called *North China Herald*), knew the updates much sooner than the readers of other media. On November 19, the *Peking Gazette*

⁶⁰⁹ Ibid.

⁶¹⁰ *Shen Bao* 3067, November 13, 1881, 2.

reposted Liu Kunyi's former memorial on November 2.⁶¹¹ However, before the repost, the imperial court had growing doubts about Liu Kunyi's investigation.

The Qing court's largest concern was whether or not Hong Rukui and Shen Baozhen were involved in instigation and collusion. Although Liu Kunyi repeatedly asserted that Hu Jinchuan was solely responsible; Hong as the Salt Distribution Commissioner of Lianghuai and the chief adjudicator of the case should not be entirely unaware of Hu's attempted instigation. Not to mention that the former viceroy, Shen Baozhen, previously respected by both the state and society, was supposed to have reviewed the case before the execution of the wronged suspects.

After the emperor commanded Liu to interrogate Hu Jinchuan thoroughly, the Investigating Censor of Henan Circuit (*Henan Dao jiancha yushi* 河南道監察御史), Li Yuhua (李郁華), and the Academician Expositor-in-Waiting (*Hanlinyuan shijiang xueshi* 翰林院侍講學士), Chen Baochen (陳寶琛), respectively submitted their memorials to criticize Liu for intentionally protecting Hong and Shen. As Li argued,

According to the Viceroy Liu Kunyi's previous memorial, he seemed to be partial to some related personnel. For example, he claimed that after the adjudication was completed, Hong Rukui submitted the case to the viceroy for further review. If the Salt Distribution Commissioner [Hong Rukui] had stated that the facts of this case were still not entirely certain, what kind of urgent reason forced the former Viceroy Shen Baozhen to kill these two innocent suspects and fabricate the plots and words? Liu Kunyi

⁶¹¹ *Shen Bao* 3144, January 29, 1882, 3–4.

had assisted Hong Rukui to avoid his responsibility to a great degree. He further claimed that during the investigation where Zhang Keyou attended, the Regional Assistant Commander Hu Jinchuan accompanied the adjudicating officers. He yelled to Zhang and commanded the personnel to torture Zhang, so Zhang did not dare to deny the charges. However, since Hu Jinchuan was not an adjudicating officer in the joint trial, how could he yell and command during the adjudication? And since Hong Rukui and other adjudicating officers were the ones in charge of adjudication, how could they listen to the command of Hu? Liu further claimed that Hu Jinchuan first recklessly instigated the witness to provide wrongful testimony and then arbitrarily used torture to interrogate the suspects. However, if these suspects had been present in the official investigation, how could Hu ever use torture on them? It is the responsibility of adjudicating officers to check how much was fact and how much was false in Hu Jinchuan's reports. Hu's words were not necessarily all wrong, but one should not use the two words, "wicked" and "crafty," to prevent him from speaking. Even if Hu recklessly instructed the witness to make wrongful testimony, it is hard to say that Hong Rukui had never incited Hu to do these things. 第據督臣劉坤一原奏，似有袒護情事。如所稱洪汝奎於定案後，稟請大員覆訊。該運司倘謂此案未甚確實，前督臣沈葆楨有何迫不及待之處，必欲誅此二人、是特砌入此等情詞？為洪汝奎卸罪地步，又稱張克友到案時，叅將胡金傳隨同問官，喝令用刑，故不敢不認等語。胡金傳非會審之員，何以在旁呼喝？洪汝奎等，承審

是其專員，豈能竟聽指揮？又稱胡金傳，始則妄拿教供，繼而擅用刑訊人犯，既經到案，胡金傳何從用刑？至胡金傳所供犯之虛實，責在問官。其言未必全非，不得以刀狡二字箝制其口。卽其妄拿教供，亦難保無洪汝奎授意情弊。⁶¹²

Li's critique had a strong impact on the subsequent investigation of the murder case. The emperor quickly commanded Liu to be impartial in the investigation process. He asked Li to check if Hong had submitted the case to the viceroy for further review. Li responded that Hong had submitted the case to Shen Baozhen, and Shen had commented on the report and approved the investigation. The words were apparently written by Shen and "everybody should be able to recognize these words" (*ren jie keyi bianren* 人皆可以辨認).⁶¹³ All these critiques and the evidence were forwarded to Liu Kunyi for further response. Liu was nervous when heard about this critique. On November 21, he quickly replied to the emperor. While stating that he would continue to check how Hu Jinchuan collaborated with the adjudicating officers, Liu asserted that he was pretty sure that Hong Rukui had never been involved in this kind of thing.⁶¹⁴

The challenges to Liu were not only from the court and officials. The *Shen Bao* also began to exert its influence on Liu's investigation. Back on September 30, *Shen Bao* had posted an editorial entitled "A Letter to Viceroy Liu Following the Memorial that Requested the Temporary Dismissal of the Assistant Regional Commander Hu" (*shu Liu*

⁶¹² *Shen Bao* 3161, February 15, 1882, 4–5.

⁶¹³ *Qing shilu, Dezong shilu*, 139: 997a-997b, November 21, GX7 (1881).

⁶¹⁴ *Qing shilu, Dezong shilu*, 139: 997a-997b, November 21, GX7 (1881).

zhijun zouqing zhan ge Hu canjiang pian hou 書劉制軍奏請暫革胡叅將片後).⁶¹⁵ In the letter, *Shen Bao*'s reporter argued that the regional authorities assigned the case to the Office of Military Affairs (*yingwuchu* 營務處) instead of the county, prefecture, and the established regular process. The Office of Military Affairs was primarily tasked with the adjudication of crimes within the military or soldiers' offences in local communities. The punishment through this process was usually execution or severe penalty. The process was usually quick because it was based on military command instead of a regular civilian trial. That is why Qu and the monk were executed within a few days of the judgment, and the investigation process was apparently careless and flawed. Now that the Taiping Rebellion was over, the authorities should not, according to the *Shen Bao*, frequently resort to military procedure particularly in a case like this. As *Shen Bao* argued, it was "in a peaceful time, but the government partially bestowed the authority to military officers and interceded in the power of judicial officials" (*nai yi chengping zhi shi, er pian xin yinyuan, yi duo yousi zhi quan* 乃以承平之世，而偏信營員，以奪有司之權). The reason, as *Shen Bao* suggested, was probably that the lower-rank officers intended to demonstrate their diligence and efficiency so that the former viceroy would appreciate their hard work. The real murderer, Shen Hongbao, must have had some connection with the military braves. The military seemed to have enmity against the wronged suspects, so they covered up Shen's crimes and shifted the blame to the latter. Here, *Shen Bao*'s reporter particularly pointed out that,

⁶¹⁵ *Shen Bao* 3075, November 21, 1881, 1.

Men of force usually recklessly viewed human lives as worthless grass. They acted wrongly out of personal considerations. They neglected the wrongful treatment toward innocent people. This is a common incorrigible habit throughout the Office of Military Affairs, so Hu was not the only one involved in this practice. However, this is the particular responsibility of Hong Rukui, who had great wisdom, a distinguished reputation, and rich experiences that ignorant and unwise persons would never surpass. He need not adjudicate this regular case, but he passed the case to local officials. Instead, he tolerated military officers to act out of their personal considerations and let the innocent suffer punishment for others. As a result, he was deceived by his subordinate's misconduct that eventually led to a serious miscarriage of justice. It's really a pity for him. 武夫輕率視人命如草芥，徇己之私，而不顧人之枉。凡有營務處者大率有此積習，不獨胡也。獨怪洪都轉，才優望重，閱歷既深，非不學無術者可比，乃以地方官應訊之案，可推不推，而務徇營員之私，代人受過。以致為人所蒙，而徒結一重冤業，是可惜已。⁶¹⁶

Shen Bao's critique apparently focused on the problems of military justice and the responsibility of Hong Rukui. Although it started with the criticism of the problematic testimony by the little boy—an obvious flaw that ordinary readers could easily observe—the report aimed to criticize the higher level of administration. It further suggested that Shen Baozhen could hardly keep himself aloof from responsibility. Now that Viceroy Liu

⁶¹⁶ *Shen Bao* 3075, November 21, 1881, 1.

was in charge of the investigation, the reporter hoped that he would thoroughly check the responsibility of these officers. However, as *Shen Bao* pointed out, the governor and viceroy had great power over military affairs. How could they properly handle a case that should be adjudicated by regular judicial officials? In any event, *Shen Bao*'s report had certain effects on the making of public opinion. It was the only privately funded newspaper that had extensively reported and commented on this case. With its gradually expanding readership, *Shen Bao* had established a certain reputation and influence during that time. Not to mention that Nanjing residents had spread the rumours, and the *Peking Gazette* had announced the details. With the enhanced pressure from public opinion that particularly arose in Nanjing, Beijing, and Shanghai, Liu and the court had to carefully adjudicate and punish the related officials.

With the rising pressure from court officials and popular sentiment, the imperial court decided to switch the adjudication authority to an experienced judicial officer. On December 8, the court appointed Aisin Gioro Linshu (愛新覺羅麟書) and Xue Yunshen (薛允升) to deal with this case. Linshu was serving in the Ministry of Personnel and was familiar with the punishment of officials. Xue was Vice Minister of Board of Punishment, where he had long dealt with legal affairs and adjudication.⁶¹⁷ On December 21, Xue and Linshu started their journey from the capital to Nanjing. Liu Kunyi had then prepared to switch the adjudication authority to these two central government officers. They arrived on January 18.⁶¹⁸ While the majority of facts had been thoroughly examined, they were tasked with re-checking the investigation conducted by Liu and previous officers and

⁶¹⁷ *Qing shilu, Dezong shilu*, 143: 29b-30b, February 29, GX8 (1882).

⁶¹⁸ *Shen Bao* 3247, May 18, 1882, 10.

examine if Hong Rukui, Shen Baozhen, and other officials were involved in collusion and wrongful judgment.

Meanwhile, *Shen Bao* posted a series of excerpts from suspects' confessions and witnesses' testimonies.⁶¹⁹ These statements were all acquired during Liu Kunyi's investigation. They contained vivid personal stories, which easily attracted the reader's attention. Fang Xiaogeng's testimony was presented to the public for the first time. His father's testimony was also published in *Shen Bao*, which provided complementary information about this conspicuous boy. Hu Jinchuan also made his confession. Liu and his subordinates conducted over twenty-seven interrogations to obtain finally his confession. But at this point, there was no further report on Hong Rukui and Shen Baozhen.⁶²⁰ Hu even argued that he was only accompanying the interrogation; even if Hong "incited" (*shouyi* 授意) anyone as suspected by the court and the investigating censor, it must have been the Muyang magistrate not him.⁶²¹

Since Xue and Linshu kept a low profile, the *Shen Bao* reporters acquired hardly any information about the new commissioner's investigation. The journalists mainly relied on reposting the news from the *Peking Gazette*, but they did not realize that the imperial court had made the final decision on the punishment of all the related officials, including Hu Jinchuan and Hong Rukui. On February 29, the emperor announced the final judgment to all the officials. Hu Jinchuan and Zhou Wu were both sentenced to beheading without delay (*zhan lijue* 斬立決). Shen Baohong was sentenced to

⁶¹⁹ *Shen Bao* 3118, January 3, 1882, 2–3; *Shen Bao* 3121, January 6, 1882, 2; *Shen Bao* 3131, January 16, 1882, 2; *Shen Bao* 3132, January 17, 1882, 2; *Shen Bao* 3134, January 19, 1882, 2.

⁶²⁰ *Shen Bao* 3118, January 3, 1882, 2–3.

⁶²¹ *Shen Bao* 3167, February 27, 1882, 1.

strangulation without delay (*jiao lijue* 絞立決). All these executions should be carried out immediately. Hong Rukai and the Muyang Magistrate Yan Kun (嚴堃) were dismissed from their posts and banished for military service. Shen Baozhen was also careless in the investigation of the case and the supervision of subordinates. Now that he had passed away, the imperial court decided not to punish him.⁶²² In the end, the three convicts were executed at Daqiao (笪橋)—a place in the south of Nanjing— on March 14.

While the imperial court thoroughly conducted the investigation and severely punished all the involved officials, *Shen Bao* continued to assert its influence upon public opinion. On March 8, *Shen Bao* posted an editorial criticizing the problems shown in the Sanpailou case—now conveniently called “the Cat Ear Mountain case.” The newspaper focused on the arbitrariness of military procedure. The core of its critique was that “military officers were usually reckless and careless; they were ignorant of the established rules; when dealing with things, they were usually capricious and arbitrary” (*wuyuan cushuai, bu'an tili, yu shi renxing wangwei* 武員粗率，不諳體例，遇事任性妄為). The reporter argued that Hu Jinchuan was trained in the military. He had long practised bandit suppression, so he never worried about taking a life or two. Moreover, ever since the introduction of the summary execution law, the regular procedure had never been truly restored. Shen Baozhen summarily executed a large number of “fierce smugglers” and bandits. His subordinates imitated his severe style and frequently killed suspects through reckless procedures in order to cater to him. What was even worse was that in the regular judicial process, many officials also recklessly handled their cases. After the magistrates completed the initial round of investigation, the upper-level

⁶²² *Qing shilu, Dezhong shilu*, 143: 29b–30b, February 29, GX8 (1882).

authorities usually recorded the testimonies and evidence without carefully going through the details. Suspects and witnesses were usually required to recite what they had said in previous investigations. The judicial review procedure was regarded as merely empty words. This is what happened in the Sanpailou case, where both military and civilian officers dealt recklessly with witnesses and confessions. To a great extent, this was the problem of the entire bureaucratic system, in which officials had long established incorrigible habits and lower-level officials had to follow what their supervising officers expected them to do.⁶²³

To a great extent, the *Shen Bao* comments demonstrate how people perceived the judicial process. Most people did not distinguish military procedure from civilian procedure. They mainly focused on how recklessly people were accused and even executed. They also cared that the real murderers were restrained by law. This is why *Shen Bao* fiercely criticized Hu Jinchuan because the journalists believed that he was the one that killed so many innocent people. The procedure of summary execution was also a problem, but to *Shen Bao*, it was the problem of the entire system because both governors and lower-level officials had viewed it as common to arbitrarily adjudicate legal cases and even frame a false charge against the suspects. Using the case of Hu Jinchuan, *Shen Bao* intended to reflect that the majority of regional officials—particularly those in military branches—did not strictly follow the state’s law.

On April 3, over three weeks after the execution of the three involved officers, *Shen Bao* published a new argument in an editorial entitled “In Dealing with Robbery Cases We Should Resume the Old Procedures” (*banli dao’an yi fu jiuzhang shuo* 辦理盜

⁶²³ *Shen Bao* 3224, April 25, 1882, 1.

案宜復舊章說). In this article, *Shen Bao* primarily argued that the summary execution procedure had been used so widely that even the accomplices (*cong 從*) were executed as immediately as ringleaders (*shou 首*). Like his contemporaries, the *Shen Bao* reporter fully understood the necessity of maintaining summary execution particularly because there were widespread bad elements including “uncaptured mobsters, disbanded braves, and those who idle around without abiding laws” (*louwang zhi zei, qianche zhi yong, youshou haoxian buneng anfen* 漏網之賊，遣撤之勇，游手好閒不能安分). The regular judicial procedure was protracted and inefficient. It had accumulated a large crowd of prisoners and gave some villains an opportunity to escape. However, the extended use of summary execution gave the officials the power to extend their authority by killing people. This was particularly unreasonable in the treatment of accomplices. As the reporter argued, these criminals were actually quite pitiful compared to the more vicious offenders.

If they were not induced to join in the robbery, they might eventually have become beggars, and would still not have lost their status as good ordinary people. If they learned to become thieves, they would only be subject to light punishments such as bamboo strokes or confinement in chains.

However, if they happened to join the villains, participating in robbery and dividing the spoils, they were only smaller elements in the group. They may not even have used or spent the spoils. Once they were captured, they would be beheaded and their head and body would lie in two different places. Isn't this injustice to these pitiful people? 使無人誘惑，即終於乞

丐，不失為清白之良民。苟學作小偷，不過撻杖枷之薄罰。而乃宛轉湊合，至於為盜分贓，尚係小股，得贓或未即花消，一旦被拿，身首異處，不亦冤乎。⁶²⁴

The result of the extended use of summary execution, as the reporter argued, was that “the authorities did not perceive it inappropriate to be arbitrary in the case of robbery; even in a homicide case, they viewed it as of no great importance” (不特視盜案為不妨獨斷，即視命案亦無甚緊要). Here, the reporter apparently viewed robbery cases as different from homicide cases. He also viewed it as necessary to treat accomplices and ringleaders in different ways. He further questioned that “in the past decades, were there no accomplices whose crimes deserved to be reconsidered with mercy but nevertheless suffering wrongful treatments and dying of a false charge?” (*shi yu nian lai, qi wu lide jinyi zhi congfan, hanyuan yu fupen zhixia zhe* 十餘年來，豈無例得矜疑之從犯，含冤於覆盆之下者).

What is intriguing here is the reasoning behind distinguishing robbery from homicide and accomplice from ringleader. In its lengthy discussion of the Sanpailou case, *Shen Bao* seemed to challenge the use of summary execution, but in fact, its focus was primarily on who should be seriously punished and who should be treated in a lenient manner. Actually, like many other critics of unjust cases, *Shen Bao* did wish the authorities to correct its problematic procedures, particularly those perceived as illicit or exceptional in the existing legal system. *Shen Bao*, as usual, expected the government to

⁶²⁴ *Shen Bao* 3248, May 19, 1882, 1.

punish severely those involved in homicide or heinous crimes. The bandits or murderers should be executed as long as the facts were clear and unquestionable. Now the reporters particularly singled out robbery and accomplices. They asserted that these offenders should not be severely punished, whereas in many other cases they supported the use of severe suppression and applauded the executions that demonstrated that “the net of Heaven has large meshes, but it lets nothing through.” This phrase had appeared in *Shen Bao*’s comments on the capture of Hu Jinchuan. To a great extent, the newspapers perceived that the real murderers included not only Zhou Wu and Shen Baohong but also Hu Jinchuan and his collaborating officers who fabricated the charges and killed the innocent.

Moreover, as *Shen Bao* commented on various occasions, the epidemic of men using force was one of its concerns during the reportedly chaotic time. Three years earlier, when the anonymous corpse was discovered at Sanpailou, the *Shen Bao* reporter suspected that the murder was committed by a roaming brave. In his final comment on the crimes of Hu Jinchuan, the reporter stressed the problem of military officers’ reckless practices, claiming that these military-involved persons never cared about human lives. *Shen Bao*’s argument was consistent with its comment on roaming braves and bandits in other cases. While the reporters specifically criticized the existing procedures and institutions—these critiques were not uncommon in the circle of educated persons—, they also shared the views of the general public who had long believed that the punishment of the “real murderers” was necessary and need not be delayed.

When the Masses Wanted This Man to Die: The Ningbo Riot of 1911

After the Sanpailou incident, *Shen Bao* reported numerous cases involving summary execution. Most of the reports revealed how the vicious criminals were captured and quickly punished according to the law. Particularly when the various sorts of bandits and market riots sharply increased during the last decades of the nineteenth century, *Shen Bao*'s reports usually reflected how the executions upheld the state's law and put the villains on their guard. In contrast, *Shen Bao* criticized a few cases involving injustice. Just like the reports in the Sanpailou case, *Shen Bao*'s comments showed no tolerance for wrongful executions. This was especially so in the case of Qiu Jin's execution in 1907. *Shen Bao* and many newspapers criticized the government for brutally executing the revolutionary Xu Xilin (徐錫麟) and extending the punishment to his alleged collaborator, Qiu Jin. The general public also showed mercy to Qiu not only because she was female but also because she had not committed rebellious actions. Many critiques were made of the extended punishment, the cruel punishment of Xu including cutting out his heart, and the apparently excessive punishment of beheading against Qiu Jin. *Shen Bao* gained a high reputation among the populace after the incident. After that, *Shen Bao* continued to comment on the government's policies and judicial cases.⁶²⁵

⁶²⁵ For recent studies and debates on the role of public opinion in the case of Qiu Jin, see Li Xizhu 李細珠, "Qingmo minjian yulun yu guanfu zuowei zhi hudong guanxi: yi Zhang Zengyang yu Qiu Jin an weili" 清末民間輿論與官府作為之互動關係: 以張曾敷與秋瑾案為例 (Interaction between Public Opinion and Official Action in the Late Qing Period: The Example of Zhang Zengyang and Qiu Jin), *Jindai shi yanjiu* 近代史研究 (Modern Chinese History Studies), 2004 No. 2 (2004): 1–44; Ma Ziyi 馬自毅, "Minjian yulun ruhe kandai Qiu Jin an: jian yu Li Xizhu xiansheng shangque" 民間輿論如何看待秋瑾案: 兼與李細珠先生商榷 (The Public Opinion on the Qiu Jin Case--A Discussion with Mr. Li Xizhu), *Shi lin* 史林 (Historical Review), 2005 No. 5 (2005): 1–20; Li Xizhu, "Minjian yulun yu Qiu Jin an wenti ji qita: da Ma Ziyi jiaoshou" 民間輿論與秋瑾案問題及其他: 答馬自毅教授 (Public Opinion, the

However, like its arguments in the Sanpailou case, *Shen Bao*'s focus was on officials' arbitrary and excessive use of punishment. If crimes were serious and the guilt of the vicious suspects was proven beyond the shadow of a doubt, *Shen Bao*'s reporters, together with other elites and ordinary people, generally showed no mercy and expected immediate execution of the villains.

Shen Bao's style was not merely derived from its founding purpose and the view of the reporters—a perspective described by Joan Judge as the view between the top and the bottom, namely, “the middle.” It was also a product of its own time when the increasingly chaotic politics and society spurred on many educated persons to express their views of judicial procedures and political culture. It was under these circumstances that the newspaper's reporters continuously reported and commented on politics particularly following the New Policies reform in 1901.

During the reform period, the Qing state encountered numerous challenges from both officials and the populace. The entire nation was unfamiliar with the new system, which downplayed the role of morality and emphasized rules and the separation of powers. The abolition of cruel punishments in 1905 forced the authorities to reinforce the use of summary execution. What further complicated matters was the intensified social and political upheaval. Throughout the late nineteenth and early twentieth centuries, the rise of elite activism and the subsequent trend of local factionalism enhanced uncertainty

Qiu Jin Case and Other Problems: Reply to Professor Ma Ziyi), *Shi lin*, 2006 No. 2 (2006): 53–59; Xia Xiaohong 夏曉虹, “Cong Qiu Jin zhi si kan wan Qing minjian shehui de Zhengyi liliang” 從秋瑾之死看晚清民間社會的正義力量 (Popular Justice Consciousness in Late Qing Society: A Perspective from an Inquiry into Qiu Jin's Death), *Huanghuagang* 黃花崗, 22 (2007): 4–18.

among different social groups.⁶²⁶ Food riots occurred across the nation.⁶²⁷ The indemnities imposed by the Boxer Protocol of 1901 enhanced the financial burdens of both government and ordinary people. The so-called “local self-governance” (*defang zizhi* 地方自治) campaigns after 1905 became a new arena for elites and governments to impose taxes on local residents. It was a period when the tensions between different social groups and local officials frequently aggravated and extended fierce local conflicts. Any controversial policies would result in discontent as the populace gradually became dissatisfied with the new changes and the worsened situation.

The 1911 Ningbo Riot reflected these tensions. In May 1911, when Ningbo’s district court and prosecution office had been established for only half a year,⁶²⁸ a robbery case triggered great turmoil in the city. The incident transpired on the first day of May.⁶²⁹ Fang Desheng (方得勝), a roaming brave, banded together with two other fugitives, Ye Fubiao (葉福表) and Fan Laozong (范老總), to rob a money shop in the

⁶²⁶ Regarding the rise of local elite activism during the late nineteenth and early twentieth centuries, see Keith R. Schoppa, *Chinese Elites and Political Change: Zhejiang in the Early Twentieth Century* (Cambridge: Harvard University Press, 1982); Mary Backus Rankin, *Elite Activism and Political Transformation in China: Zhejiang Province, 1865-1911* (Stanford: Stanford University Press, 1986); Xin Zhang, *Social Transformation in Modern China: The State and Local Elites in Henan, 1900-1937* (Cambridge: Cambridge University Press, 2000). For recent studies on the strategies of local elites and social groups in late Qing political transformation, see Xiaowei Zheng, “Political Culture, Protest Repertoires and Mass Nationalism in the 1911 Revolution in Sichuan” (PhD diss., University of California at San Diego, 2009); Shih-Chieh Lo, “The Order of Local Things: Popular Politics and Religion in Modern Wenzhou, 1840-1940” (PhD diss., Brown University, 2010).

⁶²⁷ On the formation of a culture of protest during the mid-Qing period, see Hung, *Protest with Chinese Characteristics*. For a historical comparison of Chinese and European politics of protest, see R. Bin Wong, *China Transformed: Historical Change and the Limits of European Experience* (Ithaca: Cornell University Press, 1997), Part III.

⁶²⁸ *Minguo Yin Xian zhi, zhengjiao zhi*, 579–80.

⁶²⁹ Again, dates here correspond to the lunar calendar: May 1, 1911 (the third year of Xuantong’s reign) in the lunar calendar converts to May 28 in the Western calendar.

Quanjiawan region. On that morning, the three vagrants drifted around to look for a target. When they saw people exchanging currency at the Xindeshun Shop (新德順), they entered the shop, snatched the coins from the counter, and quickly ran away.⁶³⁰ The shop owner, Sheng Shanxiang (盛善香), could not catch the offenders. His neighbour Bao Renbao (鮑仁寶) attempted to stop them and was stabbed by Fang. A shoe store manager witnessed the situation and grappled with the assailant. He too was stabbed by Fang and fell in the street. Fang and Ye ran away and threw their daggers into a brook. A policeman, Peng Fuchen (彭福臣), heard about this and hurried to the spot. He and the villagers finally caught Fang but were unable to locate Fang's fleeing companions in the ensuing search.⁶³¹

Fang, a twenty-eight-year-old man from Xiangshan County, was sent to the prosecution office for preliminary procedures. The prosecutor conducted a quick investigation and then sent him to court for a preliminary trial. During the trial, Fang confessed that he was once a soldier in the Shaoxing military training unit in 1904. He was laid off by the military and was ordered to return to his hometown. In the following years, Fang wandered around different cities.⁶³² He appeared to have committed larceny in Shanghai three years earlier after he left the army.⁶³³ During the trial, however, he refused to admit involvement in any prior crime. He asserted that he had only recently moved to Ningbo on April 25 and then resided in front of the New City God Temple.

⁶³⁰ In its later report, *Shen Bao* referred to Fang Desheng as “Fang Dehai” (方得海) and put the shop's name as “Xinderun” (新德潤). See *Shen Bao* 13790, June 30, 1911, 10; *Shen Bao* 13760, June 1, 1911, 10–11.

⁶³¹ *Fazheng zazhi* 5 (1911), 35–39; *Shen Bao* 13760, June 1, 1911, 10–11.

⁶³² *Fazheng zazhi* 5 (1911), 35–39.

⁶³³ *Shen Bao* 12585, February 14, 1908, 18; *Shen Bao* 12587, February 16, 1908, 19.

During a short stay in Ningbo, he met Ye Fubiao and Fan Laozong. On the date that they committed the robbery, they chatted in front of the temple about their miserable lives. Fang proposed a robbery and the two companions agreed to join. They then committed the crime that ultimately brought him to trial.⁶³⁴

The preliminary trial judge summoned Sheng Shanxiang to confront the suspect and quickly sent the case to formal trial. From the report of the Ningbo court and prosecution published in June 1911, it appears that the prosecutor did not accuse Fang in writing but instead orally accused him. In the formal adjudication, the judge adopted the evidence collected in the pre-trial procedures. He ruled that Fang was not a soldier when he committed the crime, thus the court needed to adhere to the regular statutes. He further reasoned that according to Qing law, a “robbery” (*qiangduo* 搶奪) case where three or more offenders were involved and had used weapons to injure the owners of the lost belongings (*shizhu* 事主) was analogous to a case of “theft with force” (*qiangdao* 強盜).⁶³⁵ In this case, the injured neighbour, Bao Renbao, was not “the owner of the lost belongings,” but the judge asserted that a neighbour injured at the gate of a shop should be regarded as no different from an owner injured at his shop. The court then concluded that Fang should be sentenced to “immediate strangulation.”⁶³⁶ According to the *Great*

⁶³⁴ *Fazheng zazhi* 5 (1911), 35–39.

⁶³⁵ In order to make this analogy, the court might have bent the story. *Shen Bao* stated that Bao Renbao (or Bao Shunbao 鮑順寶) ran after Fang for a while and was stabbed in front of Haishen Temple (海神廟). The verdict in the Fang Desheng case, however, asserted that Bao was stabbed at the entrance of the shop. See *Fazheng zazhi* 5 (1911), 35–39; *Shen Bao* 13760, June 1, 1911, 10–11. Narrowing the distance between the stabbing incident and the shop could help the judge justify his reasoning that Bao, a neighbour of the shop, could be analogous to “the owner of the lost belongings.”

⁶³⁶ *Fazheng zazhi* 5 (1911), 35–39. Translation of the Qing statutes is taken from William C. Jones, trans., *The Great Qing Code* (Oxford: Clarendon Press, 1994), 249–50.

Qing Code, those who committed “theft with force” and obtained property should be beheaded, not strangled. Furthermore, the code stipulated that the leader of the offence of “daylight robbery” who injured others should be sentenced to “beheading with delay” (*zhan jianhou* 斬監候) rather than “immediate strangulation.”

What complicated the application of the law in this case was that earlier in 1911 the imperial court had enacted the *New Criminal Law of the Great Qing (Da Qing xin xinglü* 大清新刑律), which did not allow execution by beheading. The court did not mention which laws it cited, but it is clear that it did not follow the Great Qing Code and its accompanying statutes. Neither “immediate strangulation” nor “beheading with delay” was to be carried out until the Board of Law had reviewed the case. That is to say, the court did not need to request permission for summary execution from either the High Court or the provincial government.

As Fang was not to be executed summarily, he still had some time before his execution. He was sent to the Yin County prison for detention. The events that followed shocked not only the officials but also the entire city and province. While Fang was tried in court, some residents gathered around the court building and called for his summary execution. They were angered when the judgment was announced. They shouted at the officials, asking them to behead the criminal in front of them immediately. The prosecutor told the crowd that Fang would be executed regardless of what procedures were applied. Furious at this answer, thousands of people flooded into the court. They damaged signs and vandalized the reception room, patrol room, guest room, and investigation room. They also broke windows, doors, and the officials’ carts. The riot in

the court building lasted for seven hours.⁶³⁷ The crowd yelled, “It is a daylight robbery! If the offender is not immediately executed on the spot, we can also rob a rice shop, too!” Soon after, mobs attacked two rice shops in front of the drum tower and took most of the rice. They claimed that they would continue robbing rice shops around the city. The owners of the nearby rice shops heard about this and quickly closed down their shops as a market strike (*bashi* 罷市).⁶³⁸ The riot was about to worsen. The officials became anxious and unsure of how to handle the city’s rising turmoil.

To the citizens of Ningbo, the riot over Fang Desheng was not new. In May 1906, thousands of short-term workers at rice shops protested against the shops and asked them to raise their salaries. Many workers found it hard to make a living while the shops earned a great fortune through raising the price of rice. Some rioters destroyed the rice shops and attacked the officials who came to mediate the conflict. The county magistrate, with the approval of the provincial governor, arrested one of the rioters, Ye Changcai (葉昌才), and quickly executed him. The crowd then stopped their protest and returned to work, but the tension between workers and rice shop owners remained.⁶³⁹ In February 1907, the price of rice increased again. The county magistrate was afraid that poor people would protest, thus he reduced the price of the lower-quality rice and maintained the price of the higher-quality rice.⁶⁴⁰ Rice prices and living difficulties had always been one

⁶³⁷ *Shen Bao* 13760, June 1, 1911, 10–11.

⁶³⁸ *Shen Bao* 13760, June 1, 1911, 10–11; *Shen Bao* 13771, June 11, 1911, 10.

⁶³⁹ *Shen Bao* 11597, July 31, 1905, 10; *Shen Bao* 11895, May 31, 1906, 17; *Shen Bao* 11896, June 1, 1906, 9; *Shen Bao* 11902, June 6, 1906, 9; *Shen Bao* 11925, June 30, 1906, 9; *Shen Bao* 11980, August 25, 1906, 16.

⁶⁴⁰ *Shen Bao* 12177, March 18, 1907, 10; *Shen Bao* 12188, March 29, 1907, 12.

of the most important issues of popular protest.⁶⁴¹ The execution of rioters was one among many solutions for such incidents. The execution of criminals at times had the effect of extinguishing rising outrage.

When the riot broke out after Fang's trial, the officials in front of the crowd did not know how to cope with the situation. The prosecutors sent telegrams to provincial governors asking for military support. The troops came over quite late, and only sixteen soldiers in total were sent.⁶⁴² Both the county magistrate, Zheng Lirong (鄭禮融), and the head of the Ningbo District Court, Jin Minlan (金泯瀾), came over. Jin found that the situation was beyond his control and asked the judges to send Fang Desheng to the crowd and "let them decide how to punish him." Fang was almost handed over to the rioters, but the judges interceded, stopped Jin, and returned Fang to the court building. Fang was then sent to the county prison under the protection of some security crews.⁶⁴³ The crowd moved to the prison and vowed to destroy the county yamen building. The prosecution office sent telegrams to the governor and the Board of Law. No one replied. The police arrested three members of a mob that had robbed the rice shops, but the protest did not cease.⁶⁴⁴

At seven o'clock that night, rain suddenly started pouring down, and the crowd began to leave. The prosecutors tried again to contact higher officials to seek help. This time, Ningbo Prefect Deng Benkui (鄧本達) made a short visit to the prosecution office

⁶⁴¹ In addition to food riots in other provinces in the preceding years, a Hangzhou rice riot that exploded in April 8, 1911, which was only one month before the Ningbo riot, also made the Zhejiang provincial government alert to popular revolts. For the official reports and court rulings, see *Zhejiang guanbao*, 1911, no. 22.

⁶⁴² *Fazheng zazhi*, 1911, no. 5, 35–39.

⁶⁴³ *Shen Bao* 13760, June 1, 1911, 10–11; *Shen Bao* 13849, August 28, 1911, 11.

⁶⁴⁴ *Shen Bao* 13761, June 2, 1911, 10–11.

and promised to deploy troops to protect the court building and the prison. He then quickly left. Police Commissioner Liu Cailiang (劉采亮) also came to the court, but the crowd had left much earlier.⁶⁴⁵ No one else came over during the night. Even the crowd did not gather again after the rain. It was a peaceful night indeed. However, no one knew what would transpire the next day.

The next morning, at around eight o'clock, the prosecutors finally heard about the reaction of Ningbo-Shaoxing-Taizhou Circuit Intendant Sang Bao (桑寶) to this incident. What surprised them was that Fang Desheng had been summarily beheaded under the “surveillance” (*jianshi zhengfa* 監視正法) of Sang, Deng, and Zheng. The three officials had obviously discussed how to deal with this case beforehand, but they never informed the court and prosecutors of their decision in advance.⁶⁴⁶ The angry prosecutor-in-chief Wang Yu'nian (汪郁年) quickly went to the county yamen building to confront Magistrate Zheng Lirong. Zheng admitted that he did not receive any approval from the provincial governor, but he had received a telegram of authorization from Sang. He also reported to the governor that the riot had been pacified, and he had asked the rice merchants to supply the poor with rice. This made Wang and his colleagues feel humiliated because the administrative officials had not respected their ruling and authority. Subject to an open condemnation of the actions of the administrative officials, all the judges and prosecutors resigned from their posts. They condemned the officials for summarily beheading the criminal without informing the court in advance. They opted to

⁶⁴⁵ *Shen Bao* 13760, June 1, 1911, 10–11; *Fazheng zazhi*, 1911, no. 5, 35–39.

⁶⁴⁶ *Shen Bao* 13760, June 1, 1911, 10–11.

resign and cease operating the courts because such “illegal behaviour that invaded the authority of the court” had “made the court’s ruling invalid.”⁶⁴⁷

All these events, from the Fang robbery to the resignation of the court, transpired within twenty-four hours. Trials and prosecutions were shut down for the first time in the city. Many people had nowhere to bring their lawsuits. Even the three arrested rioters had nowhere to be sent for further investigation.⁶⁴⁸ The dramatic development of this incident caught the attention of the media. *Shen Bao* followed the aftermath of this incident on a near daily basis. On May 5, *Shen Bao* printed a detailed report about the accident. The reporter first defined the nature of the incident by attributing the entire “market strike storm” (*bashi fengchao* 罷市風潮) to “a bandit’s coin robbery that raised the disturbance and then the foolish masses that took this incident as an excuse to smash the district court and the rice shops” (*feitu qiangyang qixin, yumin jieduan dahui shenpanting ji midian* 匪徒搶洋起釁，愚民藉端打毀審判廳及米店). Having seen market riots in various cities and particularly twice in Naingbo within only a few months, the reporter did not sympathize with the robber and the masses. The robber’s act was undoubtedly vicious as he almost killed the shop’s owner in front of the public. The report highlighted the status of the robber as one of the roaming braves, a group long perceived as a serious problem by both *Shen Bao* and the public. The robber’s background was perhaps one among many reasons that the masses initiated the riot, but it was not the sole cause behind the incident. The newspaper particularly criticized the protest because it had “a bunch of rascals mingled with the crowd” (*yiban liumang hunza qijian* 一般流氓混雜其間). And then the

⁶⁴⁷ *Shen Bao* 13760, June 1, 1911, 10–11; *Shen Bao* 13771, June 11, 1911, 10.

⁶⁴⁸ *Shen Bao* 13761, June 2, 1911, 10–11; *Fazheng zazhi*, 1911, no. 5, 35–39.

government's reaction and its potential tolerance of the riot further enhanced the reporter's worries. The *Shen Bao* report cited the district court's announcement that the administrative branch first allowed the riot to last for over seven hours and then quickly resorted to summary execution. All in all, as the cited court statement argued, the administrative officer's reaction had "made the judgment null and deprived the court of law enforcement authority" (*panjue wuxiao, zhixing wuquan* 判決無效，執行無權).⁶⁴⁹

The newspaper, noting the conflicts between the administrative and judicial branches, further expressed worry about the future of judicial reform. One day after its detailed report, *Shen Bao* printed another article entitled "The Giant Storm of a Summary Execution of a Ningbo Robber" (*Ningbo qiangfan jiudi zhengfa zhi da fengchao* 寧波搶犯就地正法之大風潮). The article not only described the plot of the incident but also offered an analysis of the legal dimensions of this case. According to the report, the masses damaged the official building because they demanded that the government carry out the execution immediately. The administrative officers worried that the disturbance could expand and thus executed the convict. This was the primary cause behind the resignation of the court officers, but a significant problem, as the reporter pointed out, was the application and interpretation of the *New Criminal Law of the Great Qing*. The key issue here was whether or not Fang counted as the ringleader of the offence, who was supposed to be sentenced to beheading without delay. This punishment was the most severe result in the legal system at that time, and it was very different from the sentence proposed by the provincial authorities—the military justice procedure. However, facing this critique, the provincial government did not make any response. The consequence, as

⁶⁴⁹ *Shen Bao* 13760, June 1, 1911, 10–11.

the reporter pointed out, was that the rioting masses were not only “comforted by the quick execution of the convict” (*yi shen kuaiwei* 益深快慰) but also “further fearful of laws” (*yi zhi wei fa* 益知畏法) particularly when the rumours spread regarding the potential reaction of the government toward the riot and resignation.⁶⁵⁰

Since *Shen Bao* had exposed the provincial officials for not responding to the calls of the judges and prosecutors, Provincial Governor Zeng Yun (增韞) certainly felt disgraced. As the highest official of the province who was in charge of the establishment of new-style legal infrastructures, Zeng Yun was fairly aware of the conflicts between the new system and the old bureaucrats at the local level. Magistrates once complained to him that prosecutors enjoyed stronger powers than magistrates while the magistrates bore more responsibilities than the prosecutors.⁶⁵¹ Only four months before the riot, a new order from the Commission on Studying Constitutional Government restricted summary execution to those who “called each other together and formed a gang, resisted against government troops, and acted like rebels” (*xiaoju souse, kangju guanbing, xingtong panni* 嘯聚藪澤, 抗拒官兵, 形同叛逆).⁶⁵² In April, the *New Criminal Law of the Great Qing* further prohibited the use of beheading and required all banditry cases to go through new procedures.⁶⁵³ Apparently, the use of beheading in Fang’s case violated the newest law on criminal procedure. The governor needed to find a way to explain why he had tacitly approved such an execution.

⁶⁵⁰ *Shen Bao* 13771, June 11, 1911, 10.

⁶⁵¹ *Shen Bao* 13635, January 20, 1911, 11.

⁶⁵² The order was based on the Commission on Studying Constitutional Government’s reply to the Eastern Provinces’ inquiry. See *Shen Bao* 13663, February 23, 1911, 11.

⁶⁵³ *Shen Bao* 13747, May 19, 1911, 11.

Zeng Yun quickly sent telegrams to both judicial and administrative branches. In his telegrams to the administrative officials, he condemned them for not informing the judiciary before the execution. In the telegram to the judicial officers, he stated that he had ordered administrators to investigate the rioters. He then asserted that judges and prosecutors should stay at their post, and he would not approve their resignations.⁶⁵⁴ Zeng cited the *Current Criminal Law of the Great Qing* (*Da Qing xianxing xinglü* 大清現行刑律; enacted in 1909), in which both strangulation and beheading were allowed, and in the case of banditry by soldiers, the leader should be sentenced to immediate beheading. He also asked the Police Commissioner Liu Cailiang to resign, to show that the major responsibility was with Liu and no one else.⁶⁵⁵ Under Zeng's influence, the Zhejiang Department of Justice (*Tifa si* 提法司) asserted that the main issue was “foolish rioters” who refused to listen to reason. The judges had correctly applied the law, and there was no need for them to resign.⁶⁵⁶

The court and prosecutors also had some words to say. They made a public announcement explaining how ordinary people distrusted their judgment. Since the new Westernized law protected defendants' rights, people always presumed that the new court was lenient to criminals and even tolerated banditry. They disrespected both judges and prosecutors. When prosecutors performed autopsies, people even disrupted and insulted them. Moreover, during the riot, administrative officials did not support the court. The

⁶⁵⁴ *Fazheng zazhi*, 1911, no. 5, 35–39.

⁶⁵⁵ *Shen Bao* 13761, June 2, 1911, 10–11.

⁶⁵⁶ *Shen Bao* 13762, June 3, 1911, 10–11.

court was isolated, and the law was not respected. As a result, the judges and prosecutors had no other choice but to resign from their position.⁶⁵⁷

Shen Bao's report following the governor's response covered all the above aftermath. The newspaper cited the words of the Zhejiang Department of Justice that "the judges made the verdict according to the laws, and the foolish masses made trouble out of nothing" (*faguan an li panjue, yumin wuli qunao* 法官按律判决，愚民無理取鬧). It particularly pointed out that the riot was caused by the popular fear that judges did not punish criminals severely after the judicial reforms. However, after local authorities were on guard against potential disturbances after the riot—especially when they heard the rumours that a new wave of rioting might take place—local security was gradually restored, and the popular sentiment gradually dismissed. Moreover, some locals started to make public speeches to instruct people that damaging government buildings and robbing rice were illegal and that people should not be incited by rumours. As a result, as the newspaper stated in the article's title, the storm had been gradually "pacified" (*pingding* 平定), the masses did not continue the riot, and the judges and prosecutors quickly resumed their posts within two days.⁶⁵⁸

In a later report from the provincial governor to the prime minister of the imperial cabinet, the governor explained that in Ningbo, "Chinese and foreigners mixed together and rascals and hooligans filled up the city." The rising price of food and the shortage of silver further exacerbated the situation.⁶⁵⁹ The reply from the prime minister to the provincial governor also asked the governor to "squench the riot seriously and never let

⁶⁵⁷ *Shen Bao* 13762, June 3, 1911, 10–11.

⁶⁵⁸ *Shen Bao* 13762, June 3, 1911, 10–11.

⁶⁵⁹ *Shen Bao* 13777, June 17, 1911, 11.

any trouble start.”⁶⁶⁰ Of course, these were the perspectives of the officials, but such perspectives prevailed among officials and elites across the nation. After these reports, no one mentioned the incident except for the provincial representatives.⁶⁶¹ A few months later, the 1911 Revolution started. All of these conflicts about summary execution, Western-style law, and the masses remained unresolved. They were to become problems of the Republican era.

From the case of Fang Desheng, one can see that summary execution was upheld as a common procedure to deal with robbers and rioters. The new laws and court system restricted the application of summary execution procedures, but the officials and the masses were still inclined to employ such procedures. In fact, throughout the entire reform period, the authorities never wished to surrender such a useful institution. What further complicated events is that if the officials did not carry out executions as the crowd demanded, a riot could occur and challenge the authority of the government. This is the irony of summary execution: it was not merely a tool of the officials, but also something demanded by the ordinary people. The officials could always find a way to legitimize their action of maintaining the exceptional summary execution procedures, but they could hardly legitimize riots by the masses in the name of demanding justice in a prompt manner.

Although the media expressed concern about the future of judicial reform, they did not explicitly support the resignation of judicial authorities. Instead, most of their reports were about the riot and the recovery of local order. While the administration’s intervention in judicial power caught the attention of the journalists, the primary concern

⁶⁶⁰ *Xuantong zhengji*, in *Da Qing lichao shilu*, 54: 971b; *Shen Bao* 13773, June 13, 1911, 11.

⁶⁶¹ *Shen Bao* 13790, June 30, 1911, 10.

was still how the populace distrusted judicial authorities and demanded quick justice in cases of felony crime. Food riots had been endemic during the last decades of the dynasty, and the punishment of a felony criminal could worsen the conflict between government branches and the populace; this made the chaotic society a continued concern in public media.

Conclusion

From the *Shen Bao* reports, one can observe not only competing views regarding expedient punishment but also the complex process of the formation of public opinion. The journalists' views contained both pro and con perspectives toward the use of summary execution. Their attitude depended largely upon the context, including the views and actions of the authorities, society, and the various actors in the nation. Newspapers, as a new social medium, certainly played a significant role in reporting controversial incidents. This was particularly the case with those involving wrongful judgments, including Sanpailou, Yang Naiwu and Xiaobaicai, and the summary execution of Qiu Jin, but the newspaper reports extended far beyond these sensational cases. Readers of *Shen Bao* regularly accessed news and comments on the punishment of criminals. They exposed themselves to not only the facts of crimes and the process of investigation but also the evaluation of the incidents from various aspects. *Shen Bao* certainly reflected the views of the society, yet it also constructed the views of these incidents, both their causes and the reactions toward them. Together the news reports normalized summary execution as a legitimate use of violence when the offence was serious and the evidence was clear—the circumstances where a just punishment was

deemed to be timely. It was under such circumstances that the reports and comments on summary execution reinforced popular imagination about justice in late Qing society.

Epilogue and Conclusion

On February 20, 1914, the Minister of Justice, Liang Qichao (梁啟超), resigned from his post. On the same date, he submitted a report outlining his judicial reform scheme to President Yuan Shikai (袁世凱).⁶⁶² He had previously received Yuan's support for his judicial reform plan. But now, after only five months of serving in the post, Liang decided to leave, particularly because he witnessed the reality of political struggles and the obstacles to his reform. Having heard all kinds of rumours regarding politics, including Yuan's reported plays behind the step-down of the Prime Minister Xiong Xiling (熊希齡), Liang seemed to have some hope that Yuan could sincerely consider his suggestions. No one knew if Yuan agreed with all these suggestions. The only thing we are sure is that one of Liang's suggestions apparently accorded with Yuan's approaches to criminal justice.

Listed as No. 9 of Liang's ten-point reform plan, this suggestion asserted that the government should "adjudicate the cases of certain types of criminals through a procedure that was outside the regular court system" (一部分之罪犯劃歸廳外審判).⁶⁶³ Liang admitted that regular cases should strictly follow regular procedures. However, even though the Republican government had claimed to continue the Westernization reform initiated during the late Qing period, the introduction of a relatively independent judicial system confused both central and regional governments and exacerbated tensions between judiciaries, administrative officials, military commanders, and the general public.

⁶⁶² *Zhengfu gongbao* 政府公報 (Government Bulletin) (Shanghai: Shanghai shudian, 1988 reprint), vol. 28, no. 720, 1914.05, p. 334 (p.24 of no. 720).

⁶⁶³ *Ibid.*

Noting that the new court system was unable to restrain the increasing crimes of robbery and banditry, Liang suggested that the president take a compromise approach in the reform of criminal justice. He asserted that the government should assign an organ outside the regular court system to investigate and punish the crime of “gathering a crowd and committing robbery” (*juzhong jiedao* 聚眾劫盜) through a special procedure.⁶⁶⁴

The suggestion sounds very familiar. As Liang also admitted, this plan was to imitate the punishments created during the Xianfeng and Tongzhi reigns—namely, the practice of “execution on the spot.” Liang’s mind, as Joseph Levenson argues, was torn between the “emotional commitment to history” and the “intellectual commitment to value.”⁶⁶⁵ As the highest judicial administrator of the nation, he endeavoured to use Western thought and institutions to save their country, while also bending them in order to fit China’s circumstances.⁶⁶⁶ Only five months later, the Beijing government announced the Act on Punishing Robbers and Bandits (*Chenzhi daofei tiaoli* 懲治盜匪條

⁶⁶⁴ Ibid.

⁶⁶⁵ Joseph Levenson, *Liang Ch’i-ch’ao and the Mind of Modern China* (Cambridge: Harvard University Press, 1953), 1. Of course scholars in the field do not necessarily agree about applying Levenson’s famous dichotomy without any differentiations. For example, in his discussion of the contradiction between the leading May Fourth intellectual Lu Xun’s “totalistic rejection of the Chinese tradition” at the explicit level, and his “appreciation of certain elements in that tradition” at the implicit level, Lin Yu-sheng argues that Lu Xun’s torment cannot be understood by appropriating Levenson’s thesis. This is because Lu Xun’s “appreciation of certain elements” in Chinese tradition had nothing to do with “emotional attachment” to Chinese history, but was actually due to his profound “intellectual commitment to” these elements, or “values,” that is, not as Western values, but as Chinese values. See Lin Yü-sheng, *The Crisis of Chinese Consciousness: Radical Antitraditionalism in the May Fourth Era* (Madison: University of Wisconsin Press, 1979), 104-106.

⁶⁶⁶ For example, in the No. 8 suggestion of his same proposal, Liang argued that the state should strictly regulate the requirements for becoming lawyers especially because there are many “litigation pettifoggers” (*songgun* 訟棍) and “local strongmen” (*tuhao* 土豪). While at this point the government’s focus was bandits and robbers, the application of summary execution was extended to the category of “local strongmen” after the 1920s, when the various local powers frequently conflicted with officials and those with having ties to the authorities.

例). This law allowed county magistrate and military commanders to use execution by shooting (*qiangbi* 槍斃) on a wide range of criminals according to military law (*junfa* 軍法) procedures. Included were robbers who committed other serious crimes, robbers on the sea (*haiyang xingjie* 海洋行劫), sectarian bandits (*huifei* 會匪), deserting soldiers (*taobing* 逃兵), bearded bandits (*hufei* 鬍匪), and thieves on horseback (*mazei* 馬賊). The only mandatory review for this execution was conducted by the Circuit Surveillance Commissioner (*xun'an* 巡按) and supervising military officers. Any one who committed these crimes and resisted arrest could be immediately executed without trial (*de gesha zhi* 得格殺之).⁶⁶⁷

All of these were merely part of the government's "harsh rules in times of trouble" (*luanshi yong zhongdian* 亂世用重典) policy. Ever since the beginning of the Republic era, the Provisional Government at Nanjing had issued the Prohibitions from the Governor-general of Defense and All Militaries (*Weishu zongdu ji gejun jinggaoling* 衛戍總督及各軍警告令) to authorize the army and police authorities to execute offending soldiers immediately after quick investigation (*xunming zhengfa* 訊明正法 and *jixing gesha* 即行格殺).⁶⁶⁸ In the same year, the Beijing government also issued the Law Governing the Punishment in the Army (*Lujun chengfa ling* 陸軍懲罰令). In November 1914, only four months after the enactment of this law, the government passed the Law on Punishing Robbers and Bandits (*Chenzhi daofei fa* 懲治盜匪法). The new law linked

⁶⁶⁷ *Zhengfu gongbao*, vol. 33, no. 775, 1914.07, p. 101-104 (p.3-6 of no. 775).

⁶⁶⁸ *Linshi zhengfu gongbao* 臨時政府公報 (Bulletin of the Provisional Government) (Nanjing: Jiangsu renmin chubanshe, 1981 reprint), vol. 1, no. 2, 1912.01, p. 14-16 (p. 2-4 of no. 2).

the bandit law with the regular punishment system. While most of the regions had yet to establish a district court system, the law required those with courts to conduct the process of execution. Whether or not the death penalty was processed by the administrative branch, the law required the authority to request a permission for summary execution from the Provincial High Courts (*Gaodeng shenpan ting* 高等審判廳) or the Offices of Preparations for Judicial Institutions (*Sifa choubeichu* 司法籌備處). It applied the death penalty to those who committed both robbery (*qiangdao* 強盜)—according to the definition in the Provisional New Criminal Code (*Zhanxing xing xinglü* 暫行新刑律)—and other serious crimes. It also created the category of bandit (*feitu* 匪徒) who produced or stored weapons or gathered a crowd to rob weapons from government offices. Through the revision of regular punishment, this law expanded the scope of summary execution to a wide array of offences regarding robbery and banditry.⁶⁶⁹ Moreover, in the same year, Yuan Shikai further enacted a Supplementary Act to the Provisional New Criminal Code (*Zhanxing xing xinglü buchong tiaoli* 暫行新刑律補充條例) to stiffen the punishment of many crimes in the regular criminal code.⁶⁷⁰

⁶⁶⁹ *Zhengfu gongbao*, vol. 44, no. 922, 1914.11, p. 445, 455-457 (p.3, 13-15 of no. 922). For the enforcement rules of this law, see *Zhengfu gongbao*, vol. 45, no. 931, 1914.12, p. 220-221 (p.13-14 of no. 931).

⁶⁷⁰ For the development of special criminal law and procedures, see Xiaoqun Xu, “The Rule of Law without Due Process: Punishing Robbers and Bandits in Early-Twentieth-Century China,” *Modern China* 33.2 (2007): 230-257; Xiaoqun Xu, *Trial of Modernity. Judicial Reform in Early Twentieth-Century China, 1901-1937* (Stanford: Stanford University Press, 2008), Ch. 9; Liu Heng-wen 劉恆汶, “Geming/fangeming—Nanjing guomin zhengfu shiqi guomindang de falü lunshu” 革命/反革命—南京國民政府時期國民黨的法律論述 (Revolutionary/Counter-revolutionary: Legal Narratives of the Nationalist Party in Nanjing), in Wang Peng-Hsiang 王鵬翔 ed., *2008 Falü sixiang yu shehui bianqian* 2008 法律思想與社會變遷 (Legal Thought and Social Change: 2008) (Taipei: Zhongyang yanjiuyuan falüxue yanjiusuo choubeichu, 2008), 255-304.

This extensive legislation apparently was in accordance with the ideas of Liang's proposal. It was not surprising that the new government was eager to punish criminals severely. Nor was it new that many reform-minded intellectuals supported the use of severe punishments in a period where banditry was epidemic. However, the emerging bandit laws also faced challenges from officials and ordinary people. In October 1914, one month before the enactment of the Law on Punishing Robbers and Bandits, the Ministry of Justice (*Sifabu* 司法部) argued that many county magistrates mistakenly included those whose offences were not directly listed as targets of the bandit law and arbitrarily killed them in an expedient way. The Ministry also criticized many county authorities for only offering a brief description of the crimes in their request for permission. This compelled the presidential office to exhort all regional authorities to provide detailed descriptions of the crimes and avoid misinterpretation of law in the process of death penalty.⁶⁷¹ At the same time, the Ministry of Internal Affairs (*Neiwubu* 內務部) cited the report of the governor of Sichuan to condemn the Zhangming magistrate for relying on Gelaohui sectarian members in order to suppress bandits (*yi fei zhi fei* 以匪治匪)—an approach that had been widely adopted in late Qing and also would be practiced throughout the entire Republican period. Contrary to this, the Ministry and the governor praised the neighbouring An County for severely suppressing the Gelaohui.⁶⁷² Whatever the motive and the politics involved in this statement, the law had been enacted and the regional authorities continued to practice summary execution

⁶⁷¹ *Zhengfu gongbao*, vol. 42, no. 884, 1914.10, p. 266-267 (p.16-17 of no. 884). In the following years, the Ministry of Justice also criticized regional authorities for arbitrary use of the bandit law. See *Shen Bao* 15163, May 1, 1915, 10.

⁶⁷² *Zhengfu gongbao*, vol. 42, no. 884, 1914.10, p. 259-260 (p.9-10 of no. 884).

like their Qing predecessors. The Ministry officers were certainly aware of the goals of the president and the administrators. They were part of the game of double-faced tactics, in which their pro-reform statements might not coincide with actual practice.

In December 1914, after the Law on Punishing Robbers and Bandits was issued, the *Shen Bao* commented on the current laws of China. According to the reporter, there were three types of law in the nation: the “guest-host law” (*binzhu fa* 賓主法), the “remedy law” (*jiuji fa* 救濟法), and the “compromise law” (*zhezong fa* 折衷法). The “guest-host law” meant the government made two contradictory laws on equal status, but in actual practice one law was apparently higher in effect than the other. The “remedy law” referred to situations in which the major law could not operate smoothly and so a supplementary law was enacted in order to make up the legislative flaws. The “compromise law” meant the government intentionally bent the laws in order to satisfy different expectations and settle disputes. The reporter particularly pointed out that the Law on Punishing Robbers and Bandits fit into the category of “remedy law.” The legislation of this severe law opened a wide door to military commanders, so the government issued the enforcement rules of this law to restrict the use of punishment—although the reporter lamented that such supplementary action could hardly prevent military officers from disturbing local communities. On the other hand, the reporter did not link the bandit law with what he called the “guest-host law.” But his explanation resembled the practice of criminal justice: when the government had both a reward law and a punishment law, it weighed the two based on the benefits it gained from each approach. If one brought more benefit than the other one, the authorities would certainly

go for that one.⁶⁷³ This, apparently, reflected the government's approach to criminal justice: on the one hand, the state introduced a Westernized and centralized legal system and protected the rights of defendants; on the other hand, the authorities always needed a useful tool of special laws (*tebiefa* 特別法)—the more the better—in case its local agents needed or the situations required an expedient manner.

The government once considered abolishing the law. In August 1916, two months after Yuan Shikai's death, some congressional representatives proposed to abolish Yuan's Law on Punishing Robbers and Bandits. This proposal was soon criticized by many regional officials. The Defense Commissioner of Shanghai (*Songhu hujun shi* 松滬護軍使), Yang Shande (楊善德), argued that the abolition would make military officers unable to deal with robbery cases. Since the punishments for robbers were relatively light in concession areas, the foreign authorities usually sent offenders to the Chinese government for severe punishment. If this law was suspended, there would be no law in the area, and the foreigners might have made arguments regarding the light punishment of bandits.⁶⁷⁴ The Chahar Commander-in-chief (*dutong* 都統), Tian Zhongyu (田中玉), also argued that even though the Republican bandit law was initially based on late Qing local defense institutions, the law also fit the current circumstances and it only regulated certain types of offences—namely, it did not intervene in the regular law and criminal justice system.⁶⁷⁵ Judicial officials certainly knew that the bandit law created exceptions to regular rules. It prevented judicial officials from adjudicating robbery and banditry cases, but the law was eventually maintained under pressure from regional authorities.

⁶⁷³ *Shen Bao* 15028, December 9, 1914, 7.

⁶⁷⁴ *Shen Bao* 15660, September 16, 1916, 10.

⁶⁷⁵ *Shen Bao* 15663, September 19, 1916, 6.

The critiques of the bandit law, particularly from the legal profession and those concerned about law and politics, certainly had an effect on the debate about the abolition of this law. Yet, compared to the flourishing practice of summary execution across the nation, the power of criticism was extremely minimal. In late 1919, discussions about the abolition of the bandit law appeared again. Due to its provisional status, the Law on Punishing Robbers and Bandits was supposed to be void by the end of the year. Many provincial governors called for a renewal of the law. The Republican congress soon decided to extend the law for three years.⁶⁷⁶ This issue seemed to be resolved in a satisfactory way, but it also indicated that a similar debate might appear when the expiration was approaching.

In March 1921, the new Jiangsu Governor, Wang Hu (王瑚), issued an announcement to his subordinates. Reading through the records of previous cases, he found that many magistrates failed to provide sufficient evidence, executed convicts without any report, mixed their adjudication with those without robbery and banditry offences, or submitted wrong telegrams for the application of bandit law. He required all magistrates to conduct an investigation and submit a detailed and accurate report within five days of the incident. His primary concern was not the protection of defendant's right. Instead, he exhorted local officials to control the situations immediately because the rumours and street gossip spread faster than telegrams and mail (街談口議, 速於郵傳) and the officials should avoid any revenge or conflicts following the incident.⁶⁷⁷

⁶⁷⁶ *Shen Bao* 16769, October 24, 1919, 10.

⁶⁷⁷ *Shen Bao* 17265, March 19, 1921, 11.

Few months later, when Hunan and Zhejiang provinces discussed the legislation of provincial constitutions, the debate about the abolition of the bandit law appeared again.⁶⁷⁸ The provincial governments eventually maintained the procedure of summary execution. But one year later, the Ministry of Justice, again, reviewed the renewal of the Law on Punishing Robbers and Bandits. After the cabinet and congress received the renewal case, many representatives and administrators, including Cao Kun (曹錕), Tian Zhongyu, Feng Yuxiang (馮玉祥), and Xu Shiying (許世英), submitted a joint statement to express their opposition to the abolition. Their rationales were not too different from previous oppositions. Worries about the expansion of banditry and the lack of severe instruments were all addressed in their statement. They also doubted if a complete reception of Western laws could fit the nation's situation (*qi he guoqing* 豈合國情). Not to mention that the Western powers only urged China to reform the judicial system, not to “abolish the laws and fall into disarray” (*feifa yi ziluan* 廢法以自亂). As a result, Cao and his collaborators suggested that the Westerners and reform-minded officials look into the current situation of the nation and the public's opinions about banditry before deciding which areas needed to abolish bandit laws.

Not surprisingly, the law was renewed again. The continued renewal of the bandit law was similar to the summary execution law in the late Qing. Even after the introduction of Western laws, authorities could always find a way to continue the use of expedient punishments. After the Nationalist Party gradually took control of the nation from 1927 on, the party-state apparatus further politicized summary execution law through propaganda. In April 1927, after a series of conflicts between pro-communist and

⁶⁷⁸ *Shen Bao* 17357, June 19, 1921, 7.

non-communist members within the party, Chiang Kai-shek initiated his party purification (*qingdang* 清黨) campaign and executed thousands of party members, leftists, union leaders, and various kinds of local actors.⁶⁷⁹ The persecution mainly relied on party leader's directions and the party's regulations regarding the behavior of members, including the Act on the Party Member's Violation of Oath (*Dangyuan beishi zui tiaoli* 黨員背誓罪條例). Party members who opposed revolution and plotted treason (*fan geming tumou neiluan* 反革命圖謀內亂) should be sentenced to death. The adjudication of capital cases was conducted by the temporary tribunal organized by the Central Executive Committee of the party.⁶⁸⁰

However, even such an over-expanded definition of “counter-revolutionary” crime was not enough to suppress the party's enemies. According to the “Six Principles of Party Purification” (*Qingdang yuanze liu tiao* 清黨原則六條), “local strongmen” (*tuhao*

⁶⁷⁹ While the exact number of executions remains unknown, many local sources, newspaper reports, diaries, and party archives record valuable accounts about this movement. *Zhang Gang's Diary*, for example, contains precious narratives about how local people in Zhejiang, including communists, local elites, and opponents of authorities and local groups, were executed through extralegal procedures. In addition, Wang Qisheng (王奇生) comprehensively explores primary documents and secondary sources. As Wang points out, the reports from the *Xinchenbao* (新晨報; formerly *Chenbao* 晨報) and the archives of philanthropic organizations (also studied by Tsuchida Akio 土田哲夫) suggest that 37,981 people were killed in the 1927 movement and 2,662 people were killed in the following persecutions in 1928. According to the reports of *Takungpao* (大公報; formerly *L'Impartial*), over 100,000 people were killed in this movement. The Chinese Communist Party's (CCP) reports suggest over 310,000 people were killed (including 26,000 Chinese Communist members), while the accuracy of CCP report deserves further exploration. See Wang Qisheng, *Dangyuan, dangquan, yu dangzheng: 1924-1949 nian Zhongguo guomindang zuzhi xingtai* 黨員, 黨權, 與黨爭: 1924-1949 年中國國民黨組織型態 (Party Members, Party Power and Party Conflict: The Political Structure of the KMT 1924-1949) (Shanghai: Shanghai shudian chubanshe, 2003), 94-96.

⁶⁸⁰ Wang Yinfu 王尹孚 ed., *Guomin zhengfu banxing faling Daquan* 國民政府頒行法令大全 (A Complete Collection of Nationalist Government Laws) (Shanghai: Shanghai faxue bianyishe, 1929), 819-820; Academia Sinica (*Guoshiguan* 國史館), *Guomin zhengfu dang'an* 國民政府檔案, No. 001000001278A, 1926.09.

土豪) and “evil gentry” (*lieshen* 劣紳), corrupt officials (*tangan wuli* 貪官汙吏), opportunists (*touji fenzi* 投機份子), reactionaries (*fandong fenzi* 反動份子), and any degenerate and destructive elements (*yiqie fuhua e’hua fenzi* 一切腐化惡化份子) ought to be “cleaned out” from the party.⁶⁸¹ In August 1927, the Nationalist government enacted the Act on Punishing Local Strongmen and Evil Gentry (*Chengzhi tuhao lieshen tiaoli* 懲治土豪劣紳條例). Using a blurred category of “local strongmen” and “evil gentry,” this law allowed ordinary people to report any potential suspect to the authorities. Many convicts were persecuted due to their prior conflicts or offense to party members, officials, and local actors. Like its predecessor regulation in Hunan, this law stipulated that the cases of such offense should be adjudicated by the Temporary Court of Special Criminal Affairs (*tezhong xingshi linshi fating* 特種刑事臨時法庭). However, in actual practice, many suspects were executed or beaten to death by the masses or local party members.⁶⁸² Apparently, the Nationalist government not only politicized criminal procedures but also mobilized the punishment and even death penalty. Although expedient punishment and political factionalism were not new in Chinese society, particularly since the nineteenth century, the new party-state system intensified the

⁶⁸¹ Zhongguo di'er lishi dang'anguan 中國第二歷史檔案館 ed., *Guomindang zhengfu zhengzhi zhidu dang'an shiliao xuanbian* 國民黨政府政治制度檔案史料選編 (Selected Historical Archives on the Political System of the Guomindang Government) (Hefei: Anhui jiaoyu chubanshe, 1994), xia, 606-607.

⁶⁸² Chang Shih-ying 張世瑛, “Zui yu fa: beifa shiqi Hunan diqu chengzhi tuhao lieshen zhong de baoli yishi ” 罪與罰: 北伐時期湖南地區懲治土豪劣紳中的暴力儀式 (Crime and Punishment-The Violent Punishment Done to the Oppressive Lanlords and Evil Gentry in Hunan during the Period of Northern Expedition), *Guoshiguan xueshu jikan* 國史館學術集刊 (Bulletin of Academia Historica), No. 9 (2006): 49-101.

existing conflicts among various actors—at both national and local levels—and brought the development of Chinese legal culture into a distinct phase.

The following decades thus witnessed a new height of expedient punishment in Chinese history. In November 1927, the Nanjing government announced the Provisional Act on Punishing Robbers and Bandits (*Chenzhi daofei zhanxing tiaoli* 懲治盜匪暫行條例). This law combined the categories of late Qing and Republican summary execution laws. The provincial government was allowed to review robbery and banditry cases from both administrative and judicial branches. Regional authorities could execute a wide array of criminals, including “defeated troops and roaming braves” (*kuibing youyong* 潰兵游勇) who disturbed local communities, persons who incited others (*shanhuo renxin* 煽惑人心) and triggered revolt, the men who gathered in mountains and marshes (*xiaoju shanze* 嘯聚山澤) and resisted government forces, “fierce smugglers” (*sixiao* 私梟) who carried weapons and resisted arrest, armed men who broke prisoners out of jail, and bandits on the sea.⁶⁸³ Only few months later, the government issued the Provisional Law on Punishing Counter-Revolutionary Crime (*Zhanxing fangeming zhizui fa* 暫行反革命治罪法).⁶⁸⁴ In March 1931, this law was replaced by the Law on the Urgent Punishment of Endangering the Republic (*weihai minguo jinji zhizui fa* 危害民國緊急治罪法).⁶⁸⁵ Now the nation had been used to militarized justice and mobilize punishment. In the following periods of the Anti-Japanese Resistance War, the Nationalist-Communist Civil War, the Land Reform and Anti-Rightist Movement, and the Cultural Revolution, such

⁶⁸³ Wang, *Guomin zhengfu banxing faling Daquan*, 833-837.

⁶⁸⁴ Wang, *Guomin zhengfu banxing faling Daquan*, 815-818.

⁶⁸⁵ Academia Sinica, *Guomin zhengfu dang'an*, No. 001000000438A, 1931.01.

rough justice and political persecution continued to prevail. The enduring turmoil and political struggles reinforced memories about the plight and lawlessness of modern China. In most historical narratives, war and punishment, and law and politics were continuously presented as indispensable and even interchangeable during this long dark age in China.

How, in the end, should we perceive the rise of summary execution in modern Chinese history? Lawlessness in chaotic time is certainly one way of interpretation. However, one should never forget the changes before the reform, revolution, and the battles in law and politics. As this study points out, the culture of judicial expediency emerged as a new trend before the advent of Western laws. The reform of the summary execution law was initially used to equip the empire in its encounters with social changes and political crisis. Regardless of the political struggles and the frequent rebellions throughout the nineteenth century, the militarized local organizations, the reforms on judicial review and bureaucratic communication, and the emergence of economic approaches to regional justice all contributed to the formation of quick justice. Moreover, the practice of summary execution and its associated idea of judicial expediency not only played a significant role in the long transformation of Chinese law. Its emergence and development also challenges the way we imagine Chinese law, which contained competing and contradictory forces that eventually shaped its distinct trajectory.

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This dissertation has explored the complex interplay between law, politics, and various actors by focusing on the evolution of summary execution from the mid-eighteenth to the early twentieth century. It examines the varied ways of legitimizing the

use of expedient punishments, including the creation of new legal categories, the construction of a zone of exclusion, the elaboration of a judicial economy approach, and the reassertion of the need to continue relying on exceptional legal practices such as summary execution. By analyzing these various approaches, this dissertation demonstrates how the extensive use of summary execution created a space for authorities and various actors to manipulate judicial expediency, negotiate legality, and formulate the politics of exception. Moreover, it shows how the gradual expansion of expedient space facilitated what I call the “economy of punishment”—the spread and distribution of penal resources related to crime and violence. While the penal resources contained diverse and contradictory approaches to legitimizing ideas and practices of the penalty system, the rise of summary execution, which was deeply embedded in the redistribution of penal resources, reshaped Chinese legal culture by introducing competing sources of legitimation to the operation of the death penalty and the manipulation of judicial expediency. As a result, as this study argues, the rise and continuation of summary execution demonstrates two significant dimensions of Chinese historiography: one the one hand, it reveals that a series of significant reforms *predated* the Westernization of law in the late nineteenth and early twentieth centuries—a historical event long perceived as a watershed in Chinese legal history that divided “tradition” and “modernity”; on the other hand, it demonstrates that it was such dynamic and even contradictory operations of the economy of punishment that had an everlasting effect upon Chinese legal culture even *after* the introduction of Western laws and institutions. By challenging the conventional theses in these two areas, this study argues that a proper understanding of

the dynamics of summary execution is a key to the exploration of Chinese legal history in late imperial and modern times.

Several important issues I explore in the dissertation need to be specifically addressed here. First of all, the history of summary execution enables us to rethink disorder and “lawlessness” and their correlation with the operation of mid-and-late Qing criminal justice. The practice of summary execution emerged in a time when China encountered significant social and political crises. During the eighteenth century, the increasing popular protests forced the court to enact strict laws. The increase in crimes challenged the efficacy of the legal system and the distribution of judicial resources, including the cost of prison maintenance, the use and arrangement of criminal labour in exile regions, the intensive work for the investigation of criminal cases, and the long waiting time before the final sentence. During the nineteenth century, the frequent rebellions and the spread of men using force posed a further serious challenge to the government and compelled the state and regional authorities to utilize both harsh laws and local militarized organizations. It may not be surprising that regimes usually resorted to strict laws in a time that was considered as “chaotic.” Yet the continued legitimization of this expedient punishment had made the practice of summary execution a routinized institution—a system that systematically excluded certain types of criminals through the logic of judicial expediency. The extensive routinization of summary execution makes it difficult to consider this exceptional procedure and its “decentralized” feature a “deviant” direction in the operation of criminal justice even though the state had consistently approved such decentralization through the manipulation of judicial expediency. All of these exceptions and “outside-the-court” arrangements were made routine and integral

elements of the regular judicial system. The state, while being aware that the expanding power of regional authorities would weaken the imperial control of the death penalty, consistently renewed the provisional law and reinforced the idea of judicial expediency in the practice of the death penalty.

Second, through the development of summary execution, one can see that multiple actors in addition to the state had increasingly engaged in the suppression of targeted groups and individuals. This is one of the reasons that modern scholars had long perceived the practice as a “lawless” and devastating factor within the centralized judicial system. One intriguing thing that deserves particular attention is the rising power of regional officials and their local collaborators in the suppression of felony criminals. The frequent rebellions gave these actors an opportunity to extend their power, while the imperial court continued to rely on this joint-participation mode even after the revolts were pacified. The regional actor’s participation had an enduring influence on criminal justice—it was not uncommon that local officials executed bandits without prior permission from the state during the Republican era. Various forms of community security groups continued to flourish, and local government and the populace consistently supported and funded the operation of community defense throughout the first half of the twentieth century. In theory, the power of taking life remained a prerogative of the state. In practice, through a series of authorizations, regional officials and their local collaborators played an increasingly significant role in the punishment of serious crimes. Discourses concerning eliminating urgent crimes and punishing vicious subjects appeared throughout the process. Such practices and discourses were important not only because

they created new legal categories and judicial procedures but also because they resulted in new dynamics between different actors on both national and regional levels.

Third, the history of summary execution demonstrates that the “economy of punishment” was a crucial element of Chinese legal culture. Scholars of Chinese legal history have long discussed the correlation between formal and informal practices in the legal system. Paul Katz argues that Chinese legal culture embodied what he terms a “judicial continuum” in which “a holistic range of options for achieving legitimization and dispute resolution” co-existed and influenced one another.⁶⁸⁶ Even though he was primarily focusing on the complex interplay between religion and legal practices, the model proposed by Katz certainly applies to the case of summary execution. The highly eclectic nature of formal and informal, regular and extraordinary, and legal and illegal elements in the formation of summary execution reveals a distinct process of Chinese state building and society making. Whether or not these factors were formal or informal, they reverberated from one another and they each achieved legitimization throughout the process. What this study adds to the study of Chinese legal culture is the concept of the “economy of punishment,” which, as demonstrated throughout my narrative account of the development of summary execution, structured the ways different actors approached the ideas, style, and sensibility regarding the use of penal instruments while consistently achieving legitimization from a broad and diverse range of sources. The distribution of values, ideas, and cultural and political capitals played a crucial part in the rise of summary execution and the making of judicial expediency. Such mechanism shaped

⁶⁸⁶ Paul Katz, *Divine Justice: Religion and the Development of Chinese Legal Culture* (London and New York: Routledge, 2009), 7, 47–60; Paul Katz and Jérôme Bourgon, “Swearing down the Law – A Debate,” *The China Beat*, <http://www.thechinabeat.org/?p=3653>, retrieved from the web on June 30, 2016.

Chinese governance and society by connecting different actors and extracting multiple resources of legitimation.

Last—but not the least—is how summary execution helps us rethink the so-called “legal modernization” in Chinese history. While most scholars perceive the introduction of Western laws as the divide between “tradition” and “modernity,” the rise of summary execution presented an intriguing phenomenon: it appeared before the reform of legal Westernization, and it continued to flourish after the reform. As this dissertation argues, the rise of summary execution strongly shifted the practice of Chinese death penalty toward a system where routinized and exceptional, centralized and decentralized, and formal and informal forces consistently negotiated judicial expediency and mutually shaped one another. This shifting altered the existing rigid and multi-tiered capital case review system and established the significant role of expedient culture in the practice of the death penalty—a culture in which multiple actors had access to the distribution of resources in the operation of criminal justice. All in all, it was such reproduced and reinforced judicial expediency and the associated structure of economy of punishment that formed a new element of Chinese legal culture in the mid-eighteenth century and eventually prevailed in the nineteenth and early twentieth centuries.

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