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The Performance of Power and the Administration of Justice:
Capital Punishment and the Case Review System in Late Imperial China

By

Kathleen Margaret Poling

A dissertation submitted in partial satisfaction of the
requirements for the degree of
Doctor of Philosophy
in
History
in the
Graduate Division
of the
University of California, Berkeley

Committee in charge:

Professor Wen-hsin Yeh, Chair
Professor Matthew Sommer
Professor Carla Hesse
Professor Shannon Steen

Fall 2012

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Abstract

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Professor Wen-hsin Yeh, Chair

This study illuminates the spectacular rituals of Qing justice, the administration of capital punishment in particular, by focusing on the administrative, physical and performative work that made them possible. I approach this topic via a thematic history of the system of Autumn Case Review (sometimes called “the Autumn Assizes”) in the 19th century. By considering government documentation from both local and central judicial authorities, I pay attention to the action that took place behind the scenes of execution in Qing China in order to both illuminate the paths that criminals and officials walked in the time between crime and punishment and to understand the lengths to which the Qing powers went to enact not blind, arbitrary, ritualized power but their own particular brand of justice. I argue that the purposes and values of the Qing death penalty are not simple, and that, when viewed through the lens of judicial administration, the late Qing can be seen as a complex and dynamic regime committed to performing both imperial power and imperial benevolence.

Following an introduction that places Chinese and Western interpreters of Qing justice in historical and theoretical context, chapter two describes the Case Review system in detail, outlining the flow of paperwork that made the emperor’s review of capital cases possible. By looking at the unintentional death of prisoners, chapter three investigates one moment when this review system failed to either punish or release prisoners. Chapter four outlines the transfer of prisoners that helped on a quotidian basis to perform the empire’s power and benevolence to an audience outside the bureaucracy. Chapter five considers the reduction and commutation of capital sentences in order to understand more clearly how the empire used un-executed criminals to emphasize the benevolent nature of its rule. Finally the conclusion returns to some of the historiographical questions that motivated this study to look at the way that Chinese punishment was perceived by Western (and some Chinese) critics at the beginning of the 20th century. Ultimately, I argue that the definition of justice in the Qing was based on a belief that punishment could be meted out properly, that benevolence was a constitutive part of that process and that the proper performance of the death penalty took place on and in many stages, stages that stretched well beyond the forbidding spectacle of the execution ground.

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Dedication

For my parents,
Emmie and Robert Poling,
truly my first and best teachers.

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Various friends commented on versions of this work and assisted me with research conundrums. In China Feng Youming answered my archival questions with interest and patience. Qu Wenying was kind and helpful; she is the very definition of *reqing*. Glenn Tiffert listened to my narration of the ups and downs of Chinese archival research. Norman Kutcher walked me through the vagaries of being a foreign researcher in Beijing. At home, Kathryn Eigen was always willing to read and direct me in a more coherent direction. Johanna Ransmeier consistently made complicated research seem start-able, even when it did not seem surmountable. Charlotte Cowden and Edna Tow were both the kind of commenters every scholar wants: thoughtful, caring and pragmatic. Michelle King always gave sensible advice on the practice of writing. Tom Wilson has generously invited me to expand my horizons in his classes. Elizabeth Spackman and Gina Alongi are master editors.

A small army of loyal and calm friends and administrators helped me get this dissertation finished and signed, reminding me again how much of daily life is defined by the individual's relationship to the bureaucratic structures in which she is entangled. Charlotte Cowden, always a keen reader and commenter, helped me also with a flurry of bureaucratic crises: I am sorely in her debt. Alexander Milanovich stepped in in a pinch. No graduate student in the department of History could possibly manage without the able direction of Mabel Lee. Earlier administrative adventures were facilitated with a smile by Cathy Lenfestey.

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Chapter 1. Introduction

Fall in Beijing is crisp, cold, and achingly brief. Winter lurks under even the most blindingly bright autumn days, reminding all the residents of the Qing capital that frozen days are ahead. Winter brought death, for summer's agricultural bounty and convicted criminals alike. Autumn portended those yearly tragedies, in fallen leaves, in shorter days, in frigid mornings. Or in the body of the Son of Heaven rising before dawn, dressing in mourning white and reading capital cases as the sun rose. Accompanied by a host of high officials, the emperor signed execution orders for all the criminals in all the provinces of his extensive domains. By the time the late autumn sun reached its peak, heaven's own emissary retired, having sealed the fate of murderers and thieves, adulteresses and gamblers, sons and daughters.

Meanwhile, in jails across the continent, common criminals waited for word from the capital. When that word came they were marched en masse to the marketplace at dawn, shackled, with their crimes inscribed on a sign around their necks. There they waited again, as the executioner prepared his tools and a crowd gathered to witness the most visceral evidence of imperial power. When his turn came, the murderer could only hope that justice would be swift and that his body would be returned to his family.

These brief moments, though dramatic, were merely the culminating performances of a complex criminal justice system. The highest authorities spent months preparing the documents that allowed the emperor of the largest empire on the continent to sign every capital criminal's execution order. Provincial authorities reported meticulously on the number and state of the captives waiting in their jails. Local magistrates alerted the higher authorities if any new evidence about capital cases or the people involved in them came to light. Lowly jailers in the far reaches of the empire helped make sure that the yearly performance of justice went off without a hitch, caring for the bodies of the men and women sentenced to death until the moment that the empire chose to end their lives.

This study illuminates these spectacular rituals of Qing justice by focusing on the work that made them possible. My aim is to understand more concretely the process of justice in the Qing dynasty; I approach this process through a thematic history of the system of Autumn Case Review (sometimes called "the autumn assizes") in the nineteenth century. I pay attention to action behind the scenes of Chinese execution in order to illuminate the paths that criminals and officials walked in the time between crime and punishment and to understand the lengths to which the Qing powers went to enact not blind, arbitrary, ritualized power but justice. I argue that the purposes and values of the Qing death penalty are not simplistic, and when viewed through the lens of judicial administration, the late Qing can be seen as a regime committed to performing both imperial power and imperial benevolence. As we will see, that performance may have ultimately been staged at the expense of maintaining power.

Thus, one purpose of this study is to consider the mechanics and experience of the balance between benevolence and power in the final centuries of an autocratic empire. The Qing made a great investment in their uniquely administered death penalty; this study is also concerned with how much work that balance took to produce, represent and maintain. Lastly

this study is about how understandings of Chinese punishment have stood in for understandings of Chinese law for the past hundred years.

The Setting: Eighteenth and Nineteenth Century Qing

Historians of Late Imperial China often periodize the last dynasty into three: early, high, and late Qing. This periodization itself reveals some basic assumptions of the field: in general we subscribe wholly, though that subscription is somewhat fraught, to an old belief in the rise and fall of the Mandate of Heaven, in the inevitable dynastic cycle. This study concerns both the end of the high Qing and the late Qing. Hindsight perhaps biases us toward seeing the downfall of a great empire in these centuries; I make no claims to have escaped such a bias. I do, however, see a justice system continuing to function under new pressures in this period.

The new pressures of the nineteenth century are well-known, and came from within as well as without. The Qing bureaucracy began the nineteenth century under the pall of corruption. The magnificent reign of the Qianlong emperor (1735-1796)¹ ended with the ascendancy of the grand councilor Heshen, who was by all accounts a paradigm of corruption. The Jiaqing emperor (r. 1796-1820) waited for his father to die before ousting Heshen, at which point his property was worth more than the contents of the imperial treasury.² By then the corruption for which Heshen took the blame was widespread.

Financial stress from corruption at the top of the bureaucracy came at an unfortunate time. The prosperity of the High Qing led to a population boom the ramifications of which should not be understated. The criminal justice system, like all corners of the Chinese bureaucracy, was faced with a population of over 300 million; this was double the population of one hundred years before. We can see the financial strain of this population growth on other parts of the bureaucratic structure: for one easy example we can look to the poorly repaired dikes which allowed flooding of the Yellow River 17 times in the Jiaqing reign.³

Internal threats also strained the Qing in the beginning of the nineteenth century. The later years of Qianlong's reign saw rebellions in Gansu, Shaanxi, Shandong, Henan, Hubei, Sichuan, Yunnan, Fujian, and Taiwan; the White Lotus insurgency was not quelled until the Jiaqing reign. These costly internal campaigns certainly stressed government coffers, and likely both reflected and reinforced a general reduction in confidence in Qing government institutions.

Corruption, population pressures, rebellions, floods: the dawn of the nineteenth century is saturated with the signs and symbols of dynastic decline. Add to these the new and unique pressures from foreign powers to come and you have the perfect storm for tragedy:

¹ In this study I use primarily Chinese dates, with the reigns followed by the year, month and day. I abbreviate reigns as follows: Qianlong (1735-1796) as QL, Jiaqing (1796-1820) as JQ, and Daoguang (1820-1850) as DG.

² Frederic Wakeman, Jr., *The Fall of Imperial China* (New York: Simon and Schuster 1977) 103.

³ Wakeman, *Fall of Imperial China* 106.

Qing historians can't help but see in the nineteenth century a spiral downward into the chaos of the twentieth century.

The nineteenth century, of course, brought modern armed conflict with Western powers to China's shores. The stricter opium laws of the early nineteenth century produced armed conflicts with Britain, as well as new criminals for officials to punish. The 1842 Treaty of Nanjing redefined Western presence in China through the treaty port system and laid the seeds for continued legal conflict over Western extraterritoriality in China's changing urban centers.

Even the groups questioning Qing rule from inside China took on a new, international flavor in the later nineteenth century. Bookending the second half of the nineteenth century, the Taiping and Boxer uprisings incorporated and responded to Christian ideology in opposite ways, one promoting a Christianized alternative to Confucian social hierarchy and one rejecting outright the encroachment of Western religion on Chinese life. Though these movements approached Western ideology and presence differently, clearly pressure from abroad had changed the world irrevocably from a hundred years before.

All of these new factors put pressure on the justice system in a variety of ways. But at the same time, regular crime continued to be dealt with through the same administrative procedures as it was in the preceding centuries. These processes were evolving and dynamic, and though the challenges of the second half of the nineteenth century encroached on parts of the justice system, we can continue to follow the story of Qing punishment in the face of these new pressures; the rebellions, financial strain, and war of the nineteenth century stressed but did not break imperial justice. Indeed, when we look at the way the Case Review system attempted to function 'normally,' we see a system continuing to respond within its own confines.

This study is, in an albeit somewhat veiled fashion, one concerned with the transition to modernity; I study the Qing partially to look ahead to that awkward moment when China (and the world's) relationship to and definition of 'modern' was not yet fixed. I am interested in considering the Chinese provenance of punishment in order to understand how that practice was wholly overturned in the twentieth century. In this sense, I do not take modern Western carceral punishment or the form of modernity itself to be pre-ordained; while dynastic decline may seem very real, the shape of what came next was by no means natural. Put differently: I look at the details of Qing punishment partially in order to upset the notion that modern, carceral punishment was the inevitable next step in China's march (downward or upward) into the Westernized twentieth century.

Though we search for the key to decode the end of the Qing, this period had its own logic and truths; we need not see failure portended in every second of the eighteenth and nineteenth centuries.⁴ What to us are signs and symbols of the downfall of the empire were to the bureaucrats involved situations to be dealt with cautiously and within the context of their extensive training and "everyday venality and mendacity."⁵ Those responses may not have

⁴ Here I'm pushing back against seeing the downfall of the Qing within the High Qing, especially as articulated in Philip Kuhn, *Soulstealers: The Chinese Sorcery Scare of 1768* (Cambridge, Mass.: Harvard University Press, 1990) ix: "In the year 1768, on the eve of China's tragic modern age, there ran through her society a premonitory shiver."

⁵ Philip Kuhn, *Soulstealers* 232.

been enough; we may rightfully blame a bloated bureaucracy for part of the failure of the Qing, but we should not pre-assume that that bloat stretched to all corners of the bureaucracy at all times.

Execution in Late Imperial China: Officials and Criminals

In the aftermath of their conquest of the Ming in 1644, the Manchu empire adopted on a large scale the bureaucratic structures of their Chinese predecessors. The death penalty was an important part of the judicial system and though there are substantial differences between the legal system of the Ming and that of the Qing, many of the rules governing the administration of capital punishment have roots in the inherited judicial tradition of imperial China.

Execution was uniquely administered in imperial China. Broadly speaking, the death penalty was split into two avenues of administration: those cases which were investigated, written, and reviewed by the imperial authorities and emperor and those cases which underwent this procedure but were then reviewed another time before being presented to the emperor en masse for final judgment. This second round of review, often called the assize system, is comprised of two parts, the autumn assizes and the court assizes. For reasons I will make clear in chapter two, I choose simpler terminology and call this second round of the review of capital cases the Case Review system.⁶ I focus in this study on the larger part of that system, the Autumn Case Review system.

Criminals⁷ that were processed through the Autumn Case Review system were accused of many different crimes, all serious: murder, adultery, crimes perpetrated against one's elders, crimes against the emperor, smuggling, rebellion, and so on. When we look at the criminals caught within the Autumn Case Review system we see a motley cross section of Qing society. Qing laws took one's social standing into account and as such, the regular criminals waiting for case review are primarily not people of means. If a demographer were to use only Case Review records to reconstruct the population of Qing China, he would think this was a society of volatile, often drunk, moderately poor young men and their unlucky side-kicks, along with a few women, some scarlet, some ambitious, some with tempers and knives.

Many different officials cared for this cast of criminals. The magistrates in charge of investigating and narrating their cases were supported by a host of assistants: runners, jailors, doctors, midwives, coroners, executioners. This support staff, though often nameless, was essential in both the writing of cases and in keeping criminals alive until they could be punished or released. They, and the work they do, become briefly visible as they tended to

⁶ I will capitalize Case Review when referring to the system and use all lower case when referring to the action of reviewing cases.

⁷ I am following Qing terminology in calling these men and women 'criminals:' everyone arrested within this system was assumed to be guilty of a crime, and thus identified as some sort of criminal (*zuifan* 罪犯, *fanren* 犯人, *jianfan* 監犯, etc). I assure non-readers of imperial Chinese documents that I do not intend to prejudge their innocence or guilt; rather I attempt (somewhat clumsily) to use the closest English equivalent to the way they were classified within the Case Review system under analysis.

criminals awaiting judgment and punishment; the story of capital punishment in Qing China is their story as well.

These local and provincial officials, responsible for much of the day-to-day work of administering justice, passed cases up through the ranks of imperial bureaucracy to another cast of characters. Imperial officials in the capital were the undisputed elite of Qing China: highly trained and lauded men whose professional purpose was to serve the emperor. As we will see, capital review cases went on complicated journeys through many offices, but the Board of Punishments was the administrative center of gravity for most cases bound for execution. These officials met, reviewed, streamlined, and reported; they put everything in order so that the emperor could, finally, pronounce which criminals would meet their ends and which would live another year.

Thus, before the final performance of public execution, the system of capital punishment in Qing China entangled a huge number of people, mostly men, from many walks of Qing life.⁸ The structure of justice bound these men together, from the common murderer

⁸ The people in the justice system's grasp certainly outnumbered the people executed by a great degree. Though the total numbers of capital criminals in the Qing are difficult if not impossible to access (a project that would require cross-referencing numbers for multiple localities with central documentation), over the past century, a few scholars have estimated the number of criminals executed. In the final days of the Qing the jurist and reformer Shen Jiaben guessed that the number of criminals executed was significantly lower than the number that were assigned a death penalty: "The articles conferring the punishment of death in China are comparatively many, but throughout history, in practice the offenders who were sentenced to capital punishment were mainly bandits. Under the system of the Autumn Assizes the facts were investigated in a very careful way and circumstances considered minutely. Those who were really marked off for execution every year were no more than ten percent of the total." I don't think we have any reason to question Shen Jiaben's early twentieth century guess at the proportion of death penalties executed to death penalties assigned, but I do believe we should understand more clearly the stories behind this numerical estimate (Translated in M. J. Meijer, *The Introduction of Modern Criminal Law in China*, Batavia: De Unie, 1950: 194). In more recent times, academics have attempted specific counts: James Lee, for example, estimated the total number of direct executions for many years between 1760 and 1903, finding numbers significantly under 1000 executions (the median is 461) for most years. Thomas Buoye uses central documentation as well as James Lee's data to cite the total number of executions for years between 1755 and 1790. Those yearly numbers are all between 2200 and 3300, meaning that the total number of executions was in the thousands for those years. Buoye also cross-referenced the Routine Memorials (XKTB) and the Grand Secretariat Registry (XKSS) to assert that homicide cases remained similar from year to year, despite different document loss for different years. The number of people executed, however, may have stayed constant while the number of people held, processed or sentenced may have changed: execution is, as we will see in the chapters that follow, only one of the many outcomes of a death penalty. One of my goals in organizing this study to show these other outcomes is to complicate these execution statistics; the number of lives the Qing took is not nearly the whole story. (Thomas Buoye, "Economic Change and Rural Violence: Homicides Related to disputes over Property rights in Guangdong during the eighteenth century" *Peasant Studies*, 17.4 (Summer 1990) 233-259,

to the emperor himself. Though their stories are not all apparent, and though they may not seem to have much in common, I approach Qing punishment by considering the justice system as a whole in part to demonstrate the parallel paths that officials and criminals alike walked to and from the execution ground.

The Academy: Previous Literature on Capital Punishment, the Case Review System, and the Performance of Power

The thematic investigations of the Autumn Case Review system that follow are influenced by a diverse body of scholarship. In this project I am drawing upon literature in the legal history of China, the social history of China, the worldwide history of punishment and power, and the study of performance. It would be impossible to summarize all of these scholarly traditions here, but I will attempt a brief outline. I've split this discussion into two chronological sections: first the pre-twentieth century and roughly the first three-quarters of that century, and second the late twentieth and twenty-first century.⁹

Part I: the Legacy of the Early Years

A twenty-first century China expert trained in the United States inherits her understanding of the Qing administration and execution of punishments from textbooks and monographs of a previous generation of English language scholars. Many of those earlier works are based in turn on twentieth century scholars who focused on the way that the Qing legal system worked in theory. These earlier scholars of the law did not have access to the wealth of documentation about the practice of law that we do today; they relied primarily on published legal codes and handbooks. They also relied on the assertions of earlier Western language scholars reaching back to the first British visitors to Qing China. As part of my aim in this project is to offer a correction (or at least a complication) to this inherited knowledge, here I rehearse the way that the Case Review system as a whole was described by this earlier generation of Western language legal historians.

Photographs of Qing execution taken in the first days of photography and the last of the Qing continue to illustrate English language textbooks on both modern and imperial China.¹⁰ In Jonathan Spence's *The Chinese Century*, for example, a photography collection documenting China's twentieth century, the caption next to a photo of an execution suggests that the Qing carried out corporeal punishment in public as a warning to potential criminals:

240, James Lee, "Homicide et peine capitale en Chine à la fin de l'empire: Analyse statistique préliminaire des données," *Études chinoises* X: 1-2 (1991): Tableau 1, pp 119-120).

Throughout the chapters that follow I venture a few educated guesses about the numbers of people involved in capital punishment in the Qing, but as we will see there are no simple answers to seemingly simple quantitative questions; I hope here to at least demonstrate some of the difficulties of a numerical approach to this topic.

⁹ I'm taking some chronological liberties here: the real change occurred in the last two decades of the twentieth century as mainland archives opened.

¹⁰ I will return to these photographs in the final chapter.

“The Qing penal system believed that punishment should be carried out in the open as a warning to others.”¹¹ Using photographs of executions, many of which were taken by Western travelers, to typify the Qing justice system as a whole supports the simplistic notion that Qing justice was carried out easily, swiftly, and brutally. Spence’s own textbook (still the state of the field for undergraduate lecture courses) dismisses case review in a sentence: “Death sentences did have to be reviewed by the magistrate’s superiors, and technically the emperor himself passed final judgment on all crimes meriting execution. But that was not always possible in practice and often arbitrary.”¹²

Allowing late nineteenth and early twentieth century punishment to represent Qing justice as a whole undermines our comprehension of a complex and dynamic administrative system. In addition, the idea of punishment as arbitrary, or of Case Review as an empty ritual, makes invisible a large part of the imperial criminal justice system that existed prior to the (unique, even ‘modern’) challenges of the late Qing and changed over the 250 years of the dynasty. I suggest that we need to skirt the idea of arbitrary justice and look more concretely at the way that punishment was enacted in order to better understand how the entire process of justice and punishment may have offered a warning to others, but not in the simplistic way textbooks allow nineteenth century photographs to suggest.

Spence’s idea that the emperor’s final justice was arbitrary is based, in part, on what I believe to be a misunderstanding. To clarify the origins of this belief I turn to the legal scholars of the early and mid-twentieth century. These scholars approached the issue of punishment with more focused interest in judicial processes than do the writers of later textbooks. Nineteenth century scholars such as George Thomas Staunton and Ernest Alabaster based their conclusions on those published texts that they could access. Staunton’s 1810 translation of the Qing Code¹³ and Alabaster’s 1899 discussion of “Chinese criminal law”¹⁴ were foundational for the scholars who followed.

In the mid-twentieth century, Dirk Bodde and Clarence Morris¹⁵ developed an interest in the administrative workings of “oriental” justice and as a comparison to Western legal systems. In 1967, Bodde and Morris’s seminal text *Law in Imperial China* translated selections from the Conspectus of Penal Cases (the *Xing’an Huilan*), a Qing casebook previously studied by Alabaster, to demonstrate some aspects of justice to English speaking legal scholars. At the time, legal scholars and historians alike were an audience not familiar

¹¹ Jonathan Spence, *The Chinese Century* (New York: Random House, 1996) 29.

¹² Spence, *The Search for Modern China* (New York: W. W. Norton & Co., 1990) 124. I believe by ‘arbitrary’ Spence is referring to the idea discussed below that the emperor drew a circle on the rolls of criminals to be executed and that circle defined who was executed and who was not.

¹³ George Thomas Staunton (tr.), *Ta Tsing leu lee, being the fundamental laws, and a selection from the supplementary statutes, of the penal code of China* (London: T. Cadell & W. Davies, 1810).

¹⁴ Ernest Alabaster, *Notes and Commentaries on Chinese criminal Law and cognate topics with special relations to ruling cases Together with a brief excursus on the law of property, chiefly founded on the writings of the late Sir Chaloner Alabaster, K.C.M.G, etc.* (London: Luzac and Co., 1899).

¹⁵ As well as their predecessors, such as Alabaster.

with the particulars of imperial Chinese law; scholarship tended to focus on the philosophical underpinnings of a legal structure imagined to be timeless and exotic. The *Xing'an Huilan*, though limited, offered mid-twentieth century scholars a glimpse past legal codes and travelers' accounts (the easiest primary documents for Western scholars to access at that time) into a complex world of specific cases not yet open to them.

The first half of Bodde and Morris's tome consists of Bodde's lectures on the generalities of Chinese law (imagined as a complex and changing but single system stretching into antiquity). Bodde's understanding of capital punishment is admittedly fractured: "The procedure for handling capital cases is extraordinarily complex, and on some points the sources either do not agree, are ambiguous, or remain silent,"¹⁶ but he outlines the yearly case reviews as well as he can with the sources available to him. His conclusion, that "The whole description [of assize reviews in the *Ta Ch'ing hui-tien*] carries a strongly archaic flavor, reminiscent of the tradition, as described by van Gulik, of the 'Priest-King of hoary antiquity, holding court in the open, in the shade of a tree'"¹⁷ now too carries the archaic flavor of the mid-twentieth century sinologist's curiosity about imperial China as a relic of some exotic but inferior civilization.

Still, Bodde clarifies the origin of a persistent belief among Western scholars about the way the emperor confirmed death sentences. As Bodde's Chinese sources "fail to explain how the checking itself was done," he turns to the accounts penned by Alabaster and Chang¹⁸ "which, though differing slightly, obviously represent a common tradition."¹⁹ Bodde identifies Alabaster as the source of the idea that the emperor marked a circle on the list of criminals and those whose names were not encircled by the vermilion hook²⁰ were let off. Bodde dismisses Alabaster's hook theory, and logically chooses to follow Chang on this issue: "Chang's account seems more probable than Alabaster's, since the procedure described by

¹⁶ Derk Bodde and Clarence Morris, *Law in Imperial China: Exemplified by 190 Ch'ing Dynasty Cases* (Cambridge, Mass.: Harvard University Press, 1967) 131 nt 15.

¹⁷ Bodde and Morris 137.

¹⁸ Chang Yü-chüan, "The Chinese Judiciary," *Chinese Social and Political Science Review*, 2.4:68-88 (December 1917).

¹⁹ Bodde and Morris 140.

²⁰ "The vast majority of death sentences are submitted by the Provincial Authorities... for revision... The first list is then written on a large sheet of paper... not alphabetically or by chance, but so that the names of those prisoners who are, in the opinion of the Board less guilty than the others are placed either at the corners or in the center. The list is then submitted to the Emperor... who, with a brush dipped in vermilion, makes a circle on it at seeming, and to some extent real, hazard, and the criminals whose names are traversed by the red line are ordered for execution.... This revision takes place annually in the autumn and is often called and translated 'Revision at the Autumn "Assize"' (Alabaster, *Notes*, 28-29). I have pondered this persistent but seemingly variously understood belief about the imperially penned circle, and I wonder if at some point there was an error in translating the phrase *kou*, hook, that has confused generations of scholars. My guess, for which I have no proof, is that Alabaster had a conversation about capital sentences with some Chinese official before the turn of the nineteenth century and there was a misunderstanding (perhaps aided by hand gestures?) which he put into print and which persisted.

Alabaster would allow all names not actually touched by the brush to escape execution, and this would probably be an inordinately large number.”²¹ If every subsequent scholar followed Bodde in this dismissal, the story of the emperor’s arbitrary brush stroke defining life and death on each page of condemned criminals might have stopped there. It did not, however, as we will see.

Despite Bodde’s willingness to apply logical reasoning to the process of capital sentence confirmation, he concludes from these English language descriptions that Qing law is based in an important way on quaint Chinese superstition: “Be this as it may, it is striking to see the long progression of highly rationalistic procedures in capital cases culminating in a ceremony resting upon magic and the charismatic insight of the emperor.”²² Bodde and Morris’s text is probably the most well-informed English language work of its time, one which outlines the Chinese justice system to Western legal experts as, if not modern or fair, at least fundamentally logical. When considering capital punishment, however, they still (somewhat paradoxically) draw the conclusion from admittedly imperfect sources that the emperor was a magical, ancient, cruel figure rather than rational, modern, or just (adjectives which Bodde and Morris assume to be oppositional; we need not make the same assumption).

Bodde and Morris outlined the Chinese system as a whole; scholars of the following generations focused on particular parts of that system. M. J. Meijer is the author of the most detailed holistic account of Case Review in English. Like Bodde and Morris’s mid-century work, Meijer’s early research, which predates the opening of mainland archives in the end of the twentieth century, was based on documents available in Taiwan, consisting of published legal texts and a limited (and randomly collected) set of primary documents from the Qing legal system.

Meijer, like Bodde, questions the long-held belief that the emperor processed capital cases using a circular stroke. In Meijer’s words: “There is another version [of the official protocol], according to which the Emperor drew a red circle on a list of names and those whose names were hit by the stroke of the brush would be executed; the others had to wait till the next year. It is not clear what the source of the latter version has been.”²³ Meijer goes on to question the practical ability of the Emperor to process all capital criminals in this way, concluding that we must lack some information about the way in which the final ceremony of the Case Review was carried out. Meijer’s points draw on the logic of human administration; he suggests that such images of the emperor as superhuman celestial bureaucrat can not be taken as literal truth. Rather, such stories are, for Meijer, further evidence that the Qing bureaucracy grew out of a legal system in which the emperor played the benevolent father and son of heaven.

For me, these characterizations are evidence of the willingness of twentieth century China scholars in the West to let an image of Qing justice as superstitious, irrational, arbitrary, and pre-modern color our research into the actual practices of judicial administration. Though the philosophical underpinnings of the Qing code should not be ignored, I do not find them as central to the issues as did these scholars of the nineteenth and twentieth centuries; I think we can simultaneously accept that the emperor was (or was

²¹ Bodde and Morris 141.

²² Bodde and Morris 141.

²³ Meijer, M. J, “The Autumn Assizes in Ch’ing Law” (*T’oung Pao* LXX 1984) 9.

perceived as) a superhuman, even heavenly figure and that the Qing justice system was administered rationally.²⁴

We can also move beyond substituting inherited word-of-mouth information for archival research. Western scholars continue to cite the idea that the emperor imposed death upon criminals by the randomly placed stroke of his quill, but this story appears to both have no substance and be part and parcel of the dismissal of administrative processes in favor of spectacular rituals. We no longer need allow an important moment, be it execution or ritual document signing, to stand in for knowledge about the actual administrative process. Here at the beginning of the twenty-first century we can (finally!) reconstruct parts of the judicial process from the actual paperwork left behind; we should not shy away from admitting the (gaping) holes in our knowledge.

More recent English language scholars have attempted to do just that, in two ways, first by demonstrating the distance between the representation and practice of law in imperial China and second by focusing more specifically on the stories documented in legal literature.

Part II: the Late Twentieth and Twenty-first Century

In response to their scholarly forefathers' description of Chinese law administration and philosophy as static and irrational,²⁵ some later twentieth century scholars focused on debunking their predecessors' judgments about the distance between China and the West by demonstrating the legal similarities between the two systems, while others made a conscious move toward a China-centric analysis. These two models are not as far from each other as my simplification might suggest; to explain, I start with the work of Philip Huang on the representation and practice of law in the Qing.

The early and mid-twentieth century characterization of imperial Chinese legal traditions as fundamentally different, static, and backward prompted a late twentieth century response that attempted to make Qing law, if not similar to Western legal traditions, at least commensurate. Huang began this movement by highlighting the complexity of legal practice.

²⁴ In the mid-twentieth century, other bodies of scholarship which I do not cite here reinforced these views. Famously, Max Weber dismissed imperial Chinese administration as an irrational part of a larger Chinese world view: "the views of the stratum of applicants for office exerted a very considerable influence upon the way of life of the middle classes. This resulted, first and above all, from the popular magical-charismatic conception of the qualification for office as tested by examination" (Weber, *The Religion of China: Confucianism and Taoism* (Glencoe, Ill.: Free Press, 1951) 135), "Rational entrepreneurial capitalism...has been handicapped not only by the lack of a formally guaranteed law, a rational administration and judiciary, and by the ramifications of a system of prebends, but also, basically, by the lack of a particular mentality. Above all it has been handicapped by the attitude rooted in the Chinese 'ethos' and peculiar to a stratum of officials and aspirants to office" (Weber, *Religion of China* 104). Now we can't help but see mid-twentieth century politics in these generalizations about what is China and Chinese, but I contend that, in the study of punishment at least, we have a ways to go before we escape their bonds.

²⁵ They reacted as well as to the (less relevant for the study of law but not dissimilarly framed) Fairbank school of treaty port history.

His work began, in the last decades of the twentieth century, to articulate the distance between the representation of law in officially penned documents and the practice of law as experienced by the people writing and being represented in those documents. “Our critical searchlight must be brought to bear not only on our own categories but also on those of the Qing,” Huang wrote, encouraging scholars of the law and society alike to “differentiate not only between our own constructions and Chinese practice, but also between official Chinese constructions and actual Qing practice.”²⁶ When practice and representation were de-coupled, Qing law could no longer be seen as a singular static, ancient entity.

Another way Huang responded to his predecessors’ vision of Chinese law as a static, symbolic, irrational, pre-modern system was to turn away from the structure of the law and toward more informal legal practices. By peering beneath the representation of law found in written cases, Huang found a “third realm” of justice which functioned between formal and informal legal systems.²⁷ This third realm allowed him to elevate certain informal judicial practices to a level where they were comparable with the formal analysis of the law on which Western language scholars had been relying for a century and allowed him to assert that “formal and informal justice operated on relatively equal terms.”²⁸ The details of this ‘third realm’ are not wholly relevant to a study of formal punishment (which is clearly the responsibility of official law). What is relevant is Huang’s approach to debunking the idea that Chinese law was inferior to Western law or a single static entity easily understood through the philosophical orientation of its practitioners. Huang sought to make imperial Chinese law comparable, if not identical to, Western law.

Huang’s articulation of these issues came at a fortuitous time: the last decades of the twentieth century saw a sea change in Western scholars’ access to archives held in the People’s Republic of China. This new access made possible a flurry of scholarship on legal topics. These new studies demonstrated just how much the early twentieth century scholars had been missing by analyzing only the foundational legal documents of the Qing. Using these archival materials, some scholars took a more narrative approach to questioning the legal scholars of the past. As one example, Philip Kuhn presents a different model for moving from legal documents outward to the history of life associated with but not entirely within the formal legal system. Like Huang, Kuhn was motivated by previous scholars’ assertions about the static nature of imperial Chinese law, but unlike Huang, Kuhn approached the issue by narrating a specific event and forgoing a direct discussion of historical philosophy.

In his seminal *Soulstealers*, Philip Kuhn spins a fascinating tale of administrative intrigue based on a case of mass hysteria in the eighteenth century. The sorcery scare is the central plot of *Soulstealers*; Qing bureaucracy, from the bottom to the top, is the complex and fickle star. Officials respond to mounting pressures within their capacities, the emperor responds to his officials with suspicion, and the entire event constitutes a “promontory shiver” of the imperial decline to come.

²⁶ Philip Huang, *Civil Justice in China: Representation and Practice in the Qing*, 1996: 10.

²⁷ “In the Qing... much was left to informal governance, by communities and kin groups, and a great deal of the work of government was undertaken through collaboration with the unofficial leaders of society. Indeed, for the majority of the population, contact with the state occurred largely in this third realm.” Huang, *Civil Justice in China* 110.

²⁸ Huang, *Civil Justice in China* 136.

By reading and illustrating bureaucratic hierarchy through an event rather than through a discussion of foundational philosophical or legal documents, and by choosing (or, arguably, inventing) an event earlier in the dynasty, Kuhn moves away from preceding histories, both by looking for the ultimate decline of the Qing in an era not yet tainted by foreign influence and by considering the practice of hierarchy. These moves are both, I contend, motivated by previous scholars' assertions about the static nature of the Qing empire generally and legal system specifically.²⁹

I point out Kuhn's late twentieth century work because his study, like Huang's, typifies a move away from a consideration of imperial Chinese hierarchy through the understanding of law codes and procedures to a characterization of the bureaucracy and legal system based on the documentation produced within that legal system. Though Kuhn's work and Huang's differ in the amount they are interested in comparing legal systems with those of the West, both constitute responses to the assumptions about the nature of Qing law that came before, and both were made possible by increased archival access. I continue to discuss the effect that archival access had on the study of legal and social topics in China below.

Twenty-first Century Legal Studies: Law From the Bottom Up

In the last two decades of the twentieth century Western scholars re-oriented our understanding of the Qing legal system and hierarchy from the inside out; they used more specific topical studies to re-define our image of the empire as a whole. As they turned away from the big issues of their predecessors and towards discussions of legal and socio-legal topics as diverse as exile, sexual behavior, the practice of litigation, homicide, and the development of the grand council, they simultaneously opened myriad possibilities for new research and left holes in our understanding of the ways the law functioned throughout the dynasty.

These late twentieth century scholars built upon Huang's model and demonstrated more specifically the distance between the practice and representation of law. For example, Bradley Reed's study of yamen runners looked outside the formal system of government to a set of people traditionally seen as corrupt, but who were pivotal to the legal functions of local government.³⁰ Reed re-characterizes these yamen employees as productive and necessary, thereby arguing against an earlier characterization of the legal system as a whole as irrational and stagnant.

Macauley's monograph about paralegal professionals documents a similar distance between representation and practice, suggesting that a Confucian orthodoxy has led to negative, but not particularly illuminating, portraits of these legal functionaries, professionals

²⁹ The work of Jonathan Spence is another example of this movement toward narrative as an explanative structure for Qing hierarchy and legal practice: the first example that comes to mind is Jonathan Spence, *Treason by the Book* (New York: Viking, 2001).

³⁰ Bradley W. Reed, *Talons and Teeth: County Clerks and Runners in the Qing Dynasty* (Stanford: Stanford University Press, 2000).

who offered unexpected power to people from all social classes.³¹ The focus of both Reed's and Macauley's studies on the work of these subordinate, usually dismissed professionals reinforces Huang's move toward those areas of the practice of law less well-defined by formal descriptions of Qing law. These studies of often overlooked legal practices shift attention away from the hierarchy while redefining the empire from the bottom up.

Most of the topical legal studies beginning in the last two decades of the twentieth century allowed their topics to define the nature of empire, rather than vice-versa. Sommer's work on the regulation of sexuality argues that through the legal changes surrounding sex we can see both changing social beliefs and the changing reach of the state. Again, representation as well as the practice of law are the historical subject; it is the interplay between them that defines the law and the nature of the empire itself. And again, we see how far scholarship has come from the broad generalizations about the legal system of the early twentieth century; so far, in fact, that sex, formerly a topic for social historians, is now within the realm of legal studies.

Late twentieth and twenty-first century scholars of particular legal subject matters share with Huang an interest in accessing the practice and representation of less formal law, and they share with Kuhn an interest in narrating the experience of law to understand larger issues in Chinese history. But beyond a new appreciation for the less formal realms of law, by approaching the administration of the empire through specific events and topics, all of these topical studies demonstrated just how China-centric, indeed Qing-centric, the study of law and society could be: the many topics in social and cultural history that case records opened for discussion didn't require direct comparison between a Chinese legal system and Western ones, rather they let Chinese society and hierarchy speak for themselves on a variety of specific topics. The characterization of the empire, in other words, was written in the late twentieth and twenty-first centuries by the legal system's priorities and actions, whereas earlier twentieth century scholars arrived upon that characterization through philosophical generalizations, broad descriptions of the way that the empire was intended to work, and comparisons with the 'modern' West.

The problem, at the beginning of the twenty-first century, comes when we try to place our (now not so) new-found access to case records within the context in which they were produced, and we find holes in our knowledge about the specific administration of justice. A scholar hoping to focus on the execution of capital cases in the tradition of her late twentieth century teachers needs to understand the way those cases were administered. But in the late twentieth century turn from grand generalizations about the law, somewhere, a stitch was dropped: we have continued to follow the earliest English language sinologists in our understanding of the bureaucratic processes that produced this bounty of case materials. The administration of punishment was not mere spectacle, representation was not synonymous with practice, and the imperial Chinese legal system was not static or irrational; this we agree upon. But where do we go?

One potential answer is to consult the Chinese language literature on specific legal topics. A second is to consider the ways that punishment has been approached by historians in

³¹ Melissa Macauley, *Social Power and Legal Culture: Litigation Masters in Late Imperial China* (Stanford: Stanford University Press, 1998).

other world areas, and a third is to consider non-historical traditions of scholarship. Briefly, I outline these three potential directions below.

Chinese-Language Approaches to the Qing Case Review System

Chinese specialists in Qing legal history are trained differently than Americans, to put it mildly. Common knowledge about the Qing justice system among our counterparts in the Chinese speaking world is normalized and perpetuated in part through administrative history textbooks. These textbooks rely primarily on official histories rather than archives or even published document sets. These reference works outline the justice system as well as the review system's development, but are not concerned with Case Review as a lived administrative process. While the Chinese language field has more ready access to basic information about the legal structure than did early twentieth century Western scholars, their focus on the structure of the administration of justice at the expense of the process of justice likewise results in a blind spot when it comes to the varied process of punishment and the administration thereof.

The Chinese language expert on the Case Review system is Sun Jiahong, whose recent monograph, *Qingdai de sixing jianhou*,³² fills an important gap in the scholarship on Case Review in both Chinese and English. In this work, Sun traces the development of the Case Review system from the Ming through the legal reform of the late Qing, citing changing law codes and considering cases from official histories. Sun clearly outlines the different ways that the delayed death penalty was implemented and narrates the end of this unique judicial administration.

Qingdai de sixing jianhou is informative and cast in a light familiar to readers of legal history written in mainland China. The second part of *Qingdai de sixing jianhou* considers "Judicial Characteristics" (*sifa tizheng*) and "Rule of Man and Rule of Law" (*zhiren zhifa*), all phrases used in debates on contemporary legal issues in the PRC. As Sun provides scholars with essential details about the process of Case Review (details that most English language scholars know only vaguely), he also re-discovers that Qing dynasty justice was surprisingly prescient and even humanely implemented the death penalty. Sun's explanations come against the background of a law field split at 1911 or 1949: most legal experts in the PRC have no knowledge whatsoever about the law system of the Qing (a system often described merely as 'feudal,' 'cruel,' or 'ancient'), while historians of law generally do not study the twentieth century.

Though he does not, as did the Western historians of the twentieth century, look primarily at the spectacular rituals of Case Review and execution, Sun does share with those scholars an interest in defining Case Review in cultural terms. His references to classical texts and linguistic data to identify the "intellectual origins" of the review system are standard to works of history produced in mainland China, but American historians can find such explanations puzzling. Sun attributes the unique system of Case Review to an ancient "Eastern" belief in the connections between people and the supernatural world:

³² Sun Jiahong, *Qingdai de Sixing Jianhou* (Beijing: Shehui kexue Wenxian Chubanshe, 2007).

If today there was a person who still believed that ‘human life and heaven have a connection’ we would write him off as superstitious. But in China’s ancient past, this belief was completely natural. Most of today’s researchers, although they are unable to agree on this idea’s origin or form, inherit the old, uniquely Eastern viewpoint that ‘heaven and people are one.’³³

Sun’s cultural explanation shares some elements with the way that nineteenth and twentieth century English language sinologists approached the death penalty under the Qing. Sun considers the entirety of the judicial proceedings, rather than the most dramatic moments of capital punishment (the emperor signing away convicts’ lives, the executions themselves). But though the object of his inquiry (the administration of delayed punishments) is different, the expectation that punishment necessarily reflects some larger, ancient, imagined, homogeneous cultural norm is familiar.

In sum, while earlier Western scholars approached this particular aspect of imperial law by focusing on the spectacular rituals of punishment and later Western scholars turned away from a focused analysis of this part of bureaucratic procedure and practice, scholars in the PRC tend to look at the ideal processes of Qing justice. Though scholars trained in these two traditions inherit different knowledge about the Case Review system and capital punishment, both sets of observers have used these descriptions to come to conclusions which reinforce a fixed, culturally-motivated characterization of the Qing. I propose that a better understanding of the way that the death penalty was implemented under the Qing would privilege neither the act of punishment nor an idealized judicial process, and would instead follow the late twentieth century scholars of law. I propose we consider the work that had to be done to move cases through the Case Review system as well as the experiences surrounding that system in order to clarify the investment the empire made at a particular time and place in performing benevolence as well as power.

The History of Western Capital Punishment

Looking at how historians of punishment beyond Qing China have conceptualized capital punishment may suggest useful approaches for sinologists working on similar topics. Here I parse some of that literature to highlight the recurring importance and limitations of metaphors of performance to scholarly approaches to public executions in non-Chinese contexts. Though historians of China are somewhat late to the execution-as-performance show, historians in other world areas have, for many years and in many ways, mobilized performance to describe capital punishment. Execution in any time or place is a spectacular performance of state power. Or rather: historians of punishment have chosen different forms of a performance metaphor to emphasize different aspects of execution. We can see from these examples that historians have primarily used performance to illuminate the moment of execution at the expense of its background. I will summarize a few historical approaches here before going on to consider how a newer academic inter-discipline, Performance Studies, has more specifically considered the performance metaphor, and how I might more fruitfully apply it.

³³ Sun, *Qingdai de Sixing Jianhou* 17.

Pieter Spierenburg casts *The Spectacle of Suffering*, a study of the “changing modes of repression”³⁴ in Europe, in simple theatrical terms, considering actors, stagers, and watchers. In European executions Spierenburg sees a show put on by state authorities for a receptive crowd. Curiously, the actors do not include the convicts to be executed, but the people on stage who are (allegedly) in control: the executioners. The stagers are those backstage authorities, the magistrates, who “dramatized” executions “in order to serve as a sort of morality play... The social drama should reflect their view of the world.”³⁵ The ‘watchers’ are thus the intended spectators for this morality play: the public of public executions are imagined as potential criminals. This simple approach to a performance metaphor is certainly appealing, but leaves little room for appreciating either the complex and changing nature of pre-modern state power or the alternate endings many capital cases may have had.

Though the title couches punishment in terms of ritual, Richard Evans’s study *Rituals of Retribution: Capital Punishment in Germany 1600-1987* also sees in German executions a state-sponsored performance. Evans believes the *Rituals of Retribution* he outlines are universal “theaters of cruelty” which stamp the state’s authority as well as “that of the community onto the physical body of the offender.”³⁶ In Evans’ telling, as in Spierenburg’s, at executions everyone plays his pre-scripted part, and the play supports the state’s version of events. Both of these models use a performance metaphor to focus on the work punishment did for the state, but neither looks specifically to the work the state put into that punishment. In other words, the simplest transposition of theater on to execution may draw attention to the nature of the moment of execution, but it can also obscure the story leading up to that point in time.

Other historians have allowed the state less, or more subtle agency. For Foucault, of course, public punishment was a rite, a ceremony, and a carnival; a complex performance of the discursive function of power.³⁷ For Thomas Laqueur, English executions were similarly carnivals, performances with, rather than in front of, a crowd.³⁸ By defining execution as carnival rather than theater, Laqueur adopts Foucault’s belief in spectatorial involvement in executions. He departs from Foucault’s scheme, however, in arguing that both the crowd who witnessed executions and reformers who later abolished public punishment had a communal agency in opposition to the power of the state. The carnivalesque nature of executions, for Laqueur, demonstrates that the crowd, not the state, was really in charge of English society

³⁴ Pieter Spierenburg, *The Spectacle of Suffering: Executions and the Evolution of Repression, From a Preindustrial Metropolis to the European Experience* (Cambridge: Cambridge University Press, 1984) viii.

³⁵ Spierenburg, *Spectacle of Suffering* 43.

³⁶ Richard Evans, *Rituals of Retribution: Capital Punishment in Germany 1600-1987* (Oxford: Oxford University Press, 1996) 37.

³⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, Alan Sheridan, tr., (New York: Vintage Books, 1975). Foucault is not, of course, a historian per se, but any and all historians writing about punishment in the late twentieth century write with his work in the background.

³⁸ Thomas Laqueur, “Crowds, Carnival and the State in English Executions, 1608-1868,” in *The First Modern Society*, ed. A. L. Beier (Cambridge: Cambridge University Press, 1989).

throughout the seventeenth and eighteenth centuries.³⁹ In Laqueur's work we can see how the choice of a particular kind of performance metaphor (carnival vs. theater) directs the historian's attention toward one particular class of people participating in the show, reversing, in this case, the agency: in a carnival the crowd is in charge, in a show the stagers have the power. Carnivals, however, like staged shows, do not daylight the work done back stage, nor do they make clear the possible alternate non-execution endings, endings that would have been very clear to everyone participating.

Some historians have used performance to look behind that final scene. In *The London Hanged*, Peter Linebaugh describes the courtroom, rather than the hanging tree, as the locus of legal drama: "The court room is considered a drama: the Old Bailey is the scene; black letter law is the script; the players are judge, jurors and defendants; the audience is cockney London. This helps us to understand the political or moral exemplification that the eighteenth-century hanging represented."⁴⁰ Though this dramatic metaphor does not primarily interest Linebaugh (although he notes the parallels between law and script, judge and actor, audience and public, he is far more interested in a socioeconomic analysis of one group of these people: the hanged), by moving the show to the court he offers a performance-based corrective to the historians who have focused on the day of execution at the expense of the work that brought that execution to stage. That correction, of course, only stretches so far: while the courtroom is one place we might look for an alternate show,⁴¹ I am interested in stretching performance to include the entire administrative process.

For V. A. C. Gatrell, the event of execution is not a performance, but a way in to "a history of emotion itself."⁴² Gatrell fruitfully mines a myriad of popular depictions of executions: along with the appeals for mercy around which the monograph is focused, oral and visual documents populate the pages of *The Hanging Tree*. Besides experimenting with forms of documentation, Gatrell also briefly experiments with forms of historical narration in *The Hanging Tree*: it is this experimentation that I find suggestive for my own study. Gatrell's 'microhistory' of the appeal for a nineteenth century rapist's life, which is "rooted in neighbourhood and community, playing to sense of place, and of incident—to the imagination, in short"⁴³ does not focus on the event of execution; it is rather a snapshot of the way law, society, and social norms were enacted in nineteenth century England. This alternate form of story telling represents an attempt at recreating the complicated context for

³⁹ Laqueur makes the compellingly simple but anti-Foucaultian point that "sheer physical imbalance of forces between the state and the crowd... meant that any hanging could take place only with the tacit consent of the crowd" (Laqueur, "Crowds, Carnival and the State" 352).

⁴⁰ Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London: Penguin Books, 1991) 4.

⁴¹ Courtrooms in England and courts in Qing China do not make a natural analogy. However, some scholars (such as Robert Hegel and Melissa Macauley) of both Chinese drama and Chinese history have looked at how the public perceived courtrooms.

⁴² V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford: Oxford University Press, 1994) vi.

⁴³ Gatrell, *The Hanging Tree* 447.

communities who were affected by capital punishment, and might offer a model for extending the performance metaphor of execution to include those processes that lead up to it.

Gatrell positions himself between a classical historical reliance on documentation and a less systematic, more anthropological approach to the understanding of (historical) 'others.' While I don't attempt such a fully interdisciplinary project, this (seemingly simple) acceptance that members of any particular culture understood executions and justice through an entire matrix of (fundamentally unknowable and un-re-creatable) meaning informs my approach to the larger history of the administration of capital punishment. This understanding (or more accurately, this acceptance of the failure to understand) is one historians do not achieve by turning to a single vantage point, to a single moment (or performance) in time or to a single model⁴⁴ for executions.

Thus, historians using metaphors of performance differently illuminate different parts of execution, but few mobilize those metaphors to lift the curtain to look at the administrative and judicial performances leading up to punishment. The metaphor itself holds the potential for many more meanings than these,⁴⁵ and also boasts multiple, contested genealogies. Performance is a flexible metaphor, and though I find previous historical uses of it simplistic, I contend we need not entirely jettison the concept of punishment as performance. Instead, I suggest that considering executions as state-staged performances and then turning to the structures that make those performances possible allows us to shift our attention from the brief spectacles of the state's ultimate power to the many other performances that led up to that moment. When we do so we see more being performed than an empire enforcing its social rules on non-normative members of that society through violence; rather, we see the many ways that justice, benevolence and power were performed.

Performance could be, in other words, a fruitful metaphor for the administration as well as the execution of judicial systems, and here I turn to a third non-China specific body of scholarship that has influenced my approach to the administration of capital punishment in the Qing: performance studies.

Performance Studies

As should be clear by my quick discussion of these histories of capital punishment, performance in any discipline is multiply defined and those definitions are contested. I contend that the performance metaphor is more complex than these previous historians have made it out to be; I intend rather to use performance to bridge the gap between crime and punishment, both within the bureaucracy itself and to demonstrate how justice performed imperial benevolence and power on a daily basis.

In defining performance and performance studies, Richard Schechner categorized performance into two 'moods,': the indicative and the subjunctive, or the 'is' and 'as.'⁴⁶ If we

⁴⁴ Laqueur would say genre, I believe.

⁴⁵ Indeed, performance is perhaps the only metaphor to have spawned its very own inter-discipline.

⁴⁶ Richard Schechner, *Between Theater and Anthropology* (University of Pennsylvania Press, 1985) 38.

apply this scheme to the study of non-theatrical performances, the indicative and subjunctive could be clumsily understood as the ‘theater’ and the ‘theatrical.’ The administration of justice generally and capital punishment in the Qing specifically are, it seems to me, both: I have no quibble with previous scholars who have seen the execution of prisoners as theater however conceived, but I would like to add to that the understanding of the justice system leading up to that theater as also theatrical. By finding theatricality in the administration of capital punishment we shift the focus from spectacular performances of power to the ways that that power was enacted, thus daylighting the ways that the paths to and away from execution were also performed to both the general public and to officials. While both the emperor’s own Autumn Case Review ritual and the bloody public executions of the condemned may have been theater, our understanding of the context in which that theater took place requires an understanding of the ways that the practices leading up to these two spectacles of power were also theatrical.

Thus, I am using performance to try to write an administrative history that seeks to understand what the daily practice of Qing justice meant to communicate and might have communicated, both within the bureaucracy and without. Performance studies scholars, though their subjects are diverse, have influenced this goal. To paraphrase Diana Taylor, in using a performance model to look at the bureaucratic process behind executions I engage in a search for the less apparent structures of power and justice.⁴⁷ To paraphrase Jon Mckenzie, I use performance broadly to draw together organizational, cultural, and technological performance.⁴⁸ And to paraphrase Dwight Conquergood, I believe that “the ritual replaying of traditional form always plays with, and plays off and against, the [administrative and judicial practice] that it recites.”⁴⁹

Extending the performance metaphor back stage can seem dizzying and repetitive; I lift the curtain and find more performances: there are performances all the way down. But the particular power of performance studies is to bring attention to the multiple ways that people in the Qing may have understood the meaning of the empire’s actions: this performance metaphor will expose some of the factors influencing regular people’s ‘judicial literacy,’⁵⁰ in

⁴⁷ “In using a performance model to look at political spectacles and spectatorship I engage in a search for better scripts, better politics.” Diana Taylor, *Disappearing Acts: Spectacles of Gender and Nationalism in Argentina’s ‘Dirty War’* (Durham: Duke University Press, 1997) xi.

⁴⁸ This is Mckenzie’s division, intended to draw attention to the use of ‘performance’ outside the theatrical sphere. “The mechanisms of performative power are nomadic and flexible more than sedentary and rigid, ...its spaces are networked and digital more than enclosed and physical, ...its temporalities are polyrhythmic and no-linear and not simply sequential and linear. On the performance stratum, one shuttles quickly between different evaluative grids, switching back and forth between divergent challenges to perform—or else.” Jon Mckenzie, *Perform or Else: from Discipline to Performance* (London: Routledge, 2001) 19.

⁴⁹ “The ritual replaying of traditional form always plays with, and plays off and against, the performance genealogy that it recites.” Dwight Conquergood, “Lethal Theatre: Performance, Punishment and the Death Penalty,” (*Theatre Journal* 54.3, 2002) 343.

⁵⁰ I’m borrowing here from the work of Johanna Ransmeier, who has written provocatively about emerging forms of ‘legal literacy’ in the Republican period.

order to more concretely understand what those spectacles meant in this particular time and place, rather than continuing to base our assumptions on the assumptions of our academic and traveling forefathers.

Central to my choice of performance as a (infinitely stacked) metaphor is the belief that this concept allows us to begin to make apparent the many different audiences for the many different judicial processes leading up to and away from capital punishment. If we extend performance beyond the better-known spectacular rituals of Qing justice, we begin to see a whole constellation of forms of spectators, both within and without the bureaucracy. Or rather, we begin to see the possibility of those spectators: many of them, like the audience members at any particular execution itself, are destined to remain obscure. But I seek to write a history of Qing judicial administration which attends to the ways particular processes and information have been intentionally shown and intentionally disappeared, rather than assuming a simple connection between state-sponsored spectacles of power and singly understood receptors of that theater.

When we use a performance lens to consider the system that brought the spectacle of Qing execution to the imperial throne and to the market-place stage we find more complicated and quotidian performances of imperial power, performances that are entwined with the performance of imperial benevolence and the meaning of justice in pre-twentieth century China. Throughout this study I draw attention to these non-spectacular performances of benevolence and power that surround, but often do not enact, the Qing death penalty, and to the immense amount of work those performances took to stage. I believe that the very way that the death penalty was and was not executed justified it as a benevolent institution at the same time that it enforced social norms and autocratic power. The Qing made a staggering investment in the case review process; this investment was not visible to the regime's external critics in the last days of the Qing, but it was visible to various audiences throughout the Qing. A performance frame helps me to make plain that investment, to daylight the work that it took to maintain and demonstrate a balance between benevolence and power.

The Story: How Not to be Executed in Late Imperial China

I began this project interested less in the administrative procedure of execution and more in the social history of public executions in late imperial China. I hoped to ask some of the questions that historians of European and American executions had asked of public executions: Who watched these grisly demonstrations of state power and why? What did they think? Was: "The vengeance of the people... called upon to become an unobtrusive part of the vengeance of the sovereign"?⁵¹ or was China, perhaps, the overlooked site of a pre-modern punishment that allowed "the fabrication of the disciplinary individual"?⁵²

Archival research did not yield answers to these queries. Magistrates were not in the business of recording the hopes and dreams of the crowd gathered to watch state-ordered and produced killing.⁵³ Documentation prompted far more mundane questions: Why did some

⁵¹ Foucault, *Discipline and Punish* 59.

⁵² Foucault, *Discipline and Punish* 308.

⁵³ Writers of fiction were, as were travelers; I touch on these observers in the epilogue.

criminals linger for years in jail? How, when, and why did reports and people move between offices? Why was there such a disconnect between local and central documentation?

These seemingly simple questions led me again and again to a structure I understood only cursorily: the Autumn Case Review system. Simply figuring out the administration of the death penalty in Qing China became my aim. As I navigated the local and central documentation created in the process of administering the death penalty, it became clear that the archival record is not particularly rich in documenting the intentional deaths of convicted capital criminals, but it truly excels at documenting their lives. While waiting for punishment, criminals sat in jail, gave testimony, moved between jails, got sick, and got older. In short, they lived. These lives, unlike their deaths, are reported in great detail at the local level and in selected detail at the central level; the short-term fates of these men and women were witnessed by their contemporaries far more often than their executions.

The fates of those criminals were intertwined with those of the officials who wrote these reports. For criminals, their families and the officials involved, most of the story of punishment is the story of not being punished. The journeys that magistrates and criminals alike made to and away from the execution ground were narrated and re-narrated for different purposes for different offices. In the differences in these narrations as well as in the work required to produce them we can see the goals and values of an empire previously characterized as simply autocratic, cruel, or backwards.

I have organized this study of the Autumn Case Review process to illuminate these paths, these performances, these lives. I look at how capital criminals were, even temporarily, *not* executed. First, I outline the process of administering the Case Review system. The work that went into this system is staggering, as are its apparent inefficiencies. Second, I consider a series of topics illuminating locations along the journey from crime to punishment. The experience and potential outcomes of any particular case are more complex than simply execution or exoneration: I follow criminals as they are transferred, die accidental deaths, and have their sentences delayed or commuted. In this story of life before or in the face of execution I see the day-to-day mechanics of a judicial system committed to the proper performance of power. I peer in on the ways that the Qing performed the review of capital cases in order to assert that the administrative processes supporting capital punishment represent the Qing as an autocracy concerned with justice rather than simply one concerned with punishment or power. When we look beyond executions themselves to the entire system of capital punishment we see an empire interested, perhaps to its own detriment, in using criminals and officials alike to perform both benevolence and state power.

The Sources: Traces of Punishment

The Case Review system is a minor player in all the work produced in the last few decades by scholars of law and society. Any monograph based on the rich documentation in the *xingke tiben* (Grand Secretariat routine memorials on criminal matters) collections likely bumps up against the Case Review system; it is to capital cases that many Western scholars turned when the imperial archives of the PRC were finally opened. As outlined above, the details of the Review system responsible for these case records have not yet been well-described in English; nor have the connections between Case Review and larger Qing society. This study attempts

to both clarify the process by which capital cases were reviewed and consider thematically some of the questions that arise when we look at Case Review as an essential part of the Qing justice system. To do both I look at legal documentation from both local and central authorities. Local documents offer evidence of the way that magistrates managed criminals and organized cases for review. Central documents, such as routine memorials and records of the Case Review rituals in the capital, offer official narrations of cases as well as evidence of the way that the empire managed the Case Review system as a whole. Considering both of these document sets together is the only way to make clear the complexities of the paths criminals walked on the way to (or away from) execution.

The local documentation for this study is drawn from the records of Shuntian, a prefecture not far from Beijing in Zhili (present-day Hebei). This relatively rich but under-organized local archive is held at and microfilmed by the number one archives in Beijing; most cases are from Baodi county. Materials from this study are drawn from the archival section “legal cases,” a broad category that itself includes nearly 200 numbered categories each containing many documents. These rolls are further categorized by topic and date. Source materials are from within all the topics concerning the administration of capital punishment: these topics include prisons, capital cases, organizing for the Autumn Review, escape, banishment, and particular crimes (extortion, adultery, abducting girls, etc.). I focused particularly on those topics specifically having to do with the administration of the Autumn Case Review.

The Shuntian prefecture collection contains documents from the Qianlong reign through the twentieth century, though it is most numerous in the Jiaqing and Daoguang reigns (approximately the first half of the nineteenth century). The items within this microfilmed collection range from the tiny (such as the scrawled testimony of a single witness that a criminal died of illness) to the lengthy (such as an order received by the county from the provincial government). Following a single issue or criminal requires the researcher to read through multiple categories for the period of time in question, in case subjective archival organization has placed items concerning that issue in multiple categories.

The central documentation for the study is in two parts. The first part is piecemeal, comprised of the few *xingke tiben* I was permitted to access at the number one archives in Beijing in 2006 before the collection was closed, copied memorials from those in the Grand Council reference copy archives (*lufu zouzhe*) under the category ‘law’, and memorials housed at the Academia Sinica in Taiwan. The second part is from the number one’s own Board of Punishments collection, but as those were not consistently available in Beijing, I turned to documents from the archival category “Autumn Case Review” (*qiushen tiben*) on microfilm at the Genealogical Society of Utah in Salt Lake City.

This diverse and idiosyncratic documentation opens the possibility to investigate how the Case Review system functioned from the bottom up, but also presents some methodological challenges. First, despite the Qing’s impressive ability to produce redundant paperwork about criminal cases, the ravages of the twentieth century make following a single ordinary criminal case from arrest to punishment practically impossible. Though it would be attractive to document how the narration of any one particular case changed in the process of case review, archival reality demands generalizations. Thus this study embodies a paradox: I outline and parse an empire characterized by an abundance of documentation, but I am doing so based on an imperfect documentary set.

Second, though drawing together a wide-ranging set of documentation allows me to describe the details of Case Review, that description lacks an ideal chronological and geographic diversity. Though I have reached back into the high Qing and out into the areas farther from the capital when possible, these materials shed the best light on the administrative procedures and bureaucratic pressures surrounding capital punishment as the Qing faced the twentieth century. I contend that the later-Qing temporal focus for this study offers a new perspective on a system usually accused of decline.

Thus, the image of the Case Review system presented here is necessarily skewed toward a particular time and place, as well as toward the representation of that system as functioning in a way coherent with the rules and values laid out by Qing orthodoxy. I argue, however, that these limitations may inhibit but do not prohibit our ability to see through legal documents to the men and women whom they describe. One of the delights of a diverse set of documentation on the administration of government is seeing how terribly complicated and, to us, foreign was the day-to-day life of officials working in this system. We also get to glimpse the criminals caught up in that system, and how they were narrated differently by local and central authorities.

The juxtaposition of multiple kinds of documents also makes more clear the way that the legal system collected, processed, and represented a large amount of data not only on crimes and criminals, but also on mishaps and changes within the administration of justice. In the way that information was condensed and forwarded we can see what kinds of details each level valued most; I argue in chapter two that this constitutes a tiered disappearing act that made possible the immense work required by the redundant Case Review system. In the way that errors and changes in punishment were narrated within judicial reporting we also see how the complex procedures followed by local authorities became less visible in final reports.

In short, a diversity of documents allows us to make plain the distance between the practice of criminal management and case reporting at the local level and the representation of the justice system in central reports. In that practice and representation of justice we see a balance between imperial power and benevolence, a balance that took work to produce and maintain. This balance is an underlying theme of this study of the administration of capital punishment. Chapter two will describe the Case Review system in detail, outlining the flow of paperwork that made the emperor's review of capital cases possible. By looking at the unintentional death of prisoners, chapter three will investigate one moment when this review system failed to either punish or release prisoners. Chapter four will outline the flow of humans that helped to daily perform the empire's power and benevolence to an audience outside the bureaucracy. In the processing of this common error we see more of the work that the empire put into maintaining and asserting the balance between power and benevolence. Chapter five considers the reduction and commutation of capital sentences in order to understand more clearly how the empire used un-executed criminals to perform the benevolent nature of its rule. In the conclusion I go back to some of the historiographical questions that motivated this study to look at the way that Chinese punishment was perceived by Western (and some Chinese) critics at the beginning of the twentieth century.

As we will see, the performance of capital punishment depended on an administration that negotiated, performed, and attempted to gloss over moral ideals, judicial requirements, and changing practical considerations. These lengthy processes brought prisoners to and from the execution grounds, and they demonstrate the empire's values in a different way than does

the moment when those prisoners were condemned and put to death. For most people entrenched in the justice system, too, those processes were a part of their daily life in a way that executions were not. This is the beginning of their story: the story of how punishment, the threat of punishment, and the possibility of release pervaded the lives of people working for, living under, and observing Qing rule.

Chapter 2. Disappearing Acts: The Administration of Case Review

I began this study with two performances: the emperor signing execution orders and executioners carrying out those orders. Though these two dramatic moments are essential to the story of crime and punishment under the Qing, if we are going to comprehend them we need to understand the administrative processes behind them. Thus, this chapter, like the clerical processes it outlines and complicates, has multiple purposes. First, in order to give a grounding in general understanding, I outline the basic rules and timetable of the administration of Case Review in the Qing dynasty, based on both contemporary documents and English language scholarship. Second, I patch together this system with documentary evidence in order to illuminate some rarely described aspects of the administration that made the yearly Autumn Case Review ritual possible. I frame this initial overview of the way that delayed execution was enacted in terms of the performance of punishment, but unlike the legal scholars of the nineteenth and twentieth centuries, my interest is in the behind-the-scenes action that made possible both the final dramatic performance of execution orders by the emperor and the performance of the administration of justice. That action was administrative and narrative, and consisted of the radical reduction of information. The goal of Case Review reportage was to diminish the amount of unnecessary data about the large number of people awaiting judgment; in many cases, as far as central authorities were concerned, some of those inconvenient captives themselves appeared to vanish.

As I outline this system and make visible some aspects of this system that were intentionally disappeared I begin to come to a definition of the Qing justice system that is less arbitrary and superstitious than previous characterizations would have it. I finish this chapter by enumerating some of the values I see when I cast light on the administrative structures of punishment.

Qing Justice Basics

Two facts are essential to understanding the criminal justice system under the Qing. First, until the late nineteenth century all cases assigned the death sentence were by law reviewed and approved by the emperor himself. Second, under the Qing code capital punishment was bifurcated into two administrative paths: direct and delayed sentences. Delayed sentences were those sentences in the Case Review system.⁵⁴

⁵⁴ The English term ‘assize’ was used to translate *qiushen* 秋審 or ‘autumn review’ sometime in the nineteenth century, and can be misleading to those familiar with English law. Assizes in English history (and in standard English dictionaries) denote traveling county courts, periodic events in particular counties that brought justice outside the courthouse. As a singular noun, ‘assize’ has a broader meaning (“a judicial inquest,” “a session of a court”), still in analogy with English justice, a judicial system vastly different from that of imperial China. While the Qing *qiushen* and *chaoshen* 朝審 functioned on a yearly basis, these were not periodic in the same sense, nor were they traveling courts. Rather, *qiushen* and *chaoshen*, collectively called the assizes, were a fundamental part of Qing criminal law. In China, the assize system

The first fact, that the emperor was responsible for the final pen stroke on death sentences, has both philosophical and administrative ramifications. The tradition of emperors signing off on every last execution is an imperial one; like much of the legal system the Qing inherited this concept from its Chinese predecessors. In the Qing, however, as a minority-ruled Chinese empire, the Manchu emperor performing the role of the final arbiter for every imperial subject sentenced to death held a particular significance. As the emperor brushed red ink onto the list of the condemned he was conducting himself in a way at once both “Chinese” and “imperial”: when the Qing emperor decided who would live and who would die he enacted a judicial philosophy that predated Manchu rule while he demonstrated that the Manchu rulers of the Qing truly held the mandate of heaven.

My concern here with this rule is less in terms of its philosophical meaning⁵⁵ and more as its ramifications as an administrative imperative. Requiring the emperor to see all cases bound for execution must have created a staggering amount of clerical work. Even if this rule was not followed perfectly, keeping up the façade of the emperor’s involvement in every capital case in every province required an astonishing amount of paper and labor as well as a complex system of communication between legal offices in standardized bureaucratic language.

Just a brief look at a fraction of capital cases for any one year demonstrates the administrative challenges of such a system. For the province Zhili in Qianlong 54 there were 332 total capital cases.⁵⁶ The numbers vary some but are similar for Jiaqing 14 (261 cases)⁵⁷ and Daoguang 28 (305 cases).⁵⁸ Using available numbers for the period between Qianlong 54 and Daoguang 28, I find an average of 265 cases per year in this particularly central province.⁵⁹ However, when we compare Zhili to other provinces, only a smoothly running bureaucratic machine and teams of assistants at every level would have made it possible for a

facilitated the review of capital cases in multiple levels, from the local yamen to the emperor and in all geographical locations, even in far-flung provinces (though it was modified according to geography).

The term ‘assize’ is further confused by multiple, overlapping usages in contemporary English language literature on Qing punishment. M. J. Meijer, though himself the English language expert on the Case Review system, uses the phrase “execution at the autumn assizes,” giving a casual reader the false impression that punishment itself occurred either in autumn or immediately after the emperor’s review. ‘Assizes,’ ‘autumn assize,’ and ‘the assize system,’ all have been used in English interchangeably for everything from the initial case review to the final punishment. The all encompassing and vague nature of the way Sinologists have used these terms leads me to prefer, in English, ‘the Case Review system,’ to make plain my focus on the entire administrative journey rather than a single event within that process.

⁵⁵ The ethnic / racial elements of these performances of power is fruitful ground for future research.

⁵⁶ GSU 1357770 item 3, QL 54.

⁵⁷ GSU 1357770 item 17, JQ 14.

⁵⁸ GSU 1357772 item 7, DG 28.

⁵⁹ I’m taking an average by combining ten years of data between QL 54 and DG 28: this is not a statistically precise analysis but rather a rough estimate.

supernaturally efficient emperor to even glance at the documentation for similar cases from the entire empire.

The second essential fact is that that death sentences were administered via two paths: direct and delayed. This system and the terminology it uses requires some explanation. Capital punishment in the Qing was not a single punishment but a category of punishment the components of which differed both in form and administration. In terms of form, execution was primarily carried out by either strangulation or decapitation, with the Qing code calling for the extraordinary punishment of *lingchi* for several specific crimes.⁶⁰ In terms of administration, execution was enacted in two distinct ways: direct and delayed sentences.

The two ordinary forms of execution, strangulation and decapitation, represent different degrees of punishment. Just as banishment was a more serious punishment than time in the cangue, decapitation was a more serious punishment than strangulation, though both resulted in the death of the criminal. Since strangulation left the body intact it was considered a less grave sentence. The two ways of administering punishment also represented different degrees; delayed, or post-Case Review sentences were automatically reviewed a second time and thus held the potential for overturning or commutation. Delayed (or post-review) sentences were thus less severe than their direct counterparts. While direct executions were still, until the nineteenth century, approved by the emperor himself, they were not subject to the multi-level review and yearly time table of delayed sentences (a time table I outline below); these executions were most likely carried out relatively quickly. The hierarchy of capital punishment in Qing China, from most severe to least severe is thus

1. The extraordinary punishment of *lingchi* 凌遲 (death by slicing)
2. direct execution by *zhan* 斬 (decapitation)
3. direct execution by *jiao* 絞 (strangulation)
4. delayed (or post-review) execution by decapitation and
5. delayed (or post-review) execution by strangulation

It is delayed, or post-review punishments I focus on here. When I refer to the Case Review system, I refer to all cases assigned the fourth and fifth punishments on this list.

I translate these terms ('delayed' 'post-review') from the contemporary bureaucratic vocabulary. The most common term indicating the review system is *qiushen*, which literally means "autumn review." (Its analogue, *chaoshen*, means "court review" and denotes a parallel, smaller system of Case Review primarily for the capital.) In two characters, *qiushen* is both descriptive and specific, describing the administrative act (review of cases) and the time (autumn) that this act occurred. What these two characters don't reveal, and what would have been common knowledge to all legal functionaries, is that (to my knowledge) all *qiushen* cases involve the death penalty: criminals in *qiushen* cases were those criminals sentenced to delayed execution.

⁶⁰ On *lingchi* see Timothy Brook, Jerome Bourgon, Gregory Blue, *Death by a Thousand Cuts*, Cambridge: Harvard University Press, 2008, especially pp 58-60 where Brook et. al. outline the additions to *lingchi* laws within the Qing code. I have seen the extraordinary punishment of *lingchi* categorized under decapitation (*zhan*) and in its own category. In any event my focus on local archives has meant that *lingchi* has been a very small percentage of the cases I've come across; for the most part I leave *lingchi* to Brook, et. al. and discuss decapitation and strangulation with delay.

Qiushen was not only used to identify those cases that required another review, but also to define all the administrative work that went in to preparing those cases for many levels (and in some cases many years) of review. Thus, “preparing the autumn reviews” denotes an entire section in local archives containing information about investigations into witnesses and crime scenes, prisoner movement, and reports to higher authorities. And though *qiushen* describes actions taken by Qing officials (the review of criminal cases), this term was modified to describe the subject of the case: an “autumn Case Review criminal” (*qiushen fan*) was a criminal already assigned a punishment worthy of that review. “Assize / Case Review criminal” is not a phrase I have seen used in English language scholarship, though offenders within that system populate many classic monographs on Qing law and society. This linguistic lacuna furthers the gulf between Chinese documents and English language scholarship, de-emphasizing the administrative process while foregrounding the criminal and the details of his world outside the local jail: I somewhat clumsily refer to these captives as “criminals within the Case Review system.”

The other common term indicating the Case Review system or delayed capital punishment is *jianhou*, the origin of the phrase ‘delayed punishment.’ *Jianhou* (“waiting in jail”) describes instead the criminal’s journey through the justice system, focusing on the perpetrator of the crime rather than the officials who prosecuted it. In sentencing itself *jianhou* is used as an abbreviation of the more descriptive “*jianhou qiuhou chujue*” or in Meijer’s translation, “waiting in jail till after the autumn a decision about the punishment were [sic] taken.”⁶¹ *Jianhou* thus identifies the administrative realities of capital punishment through a system of multiple rounds of case review: at the very least in terms of time jail was the majority of the experience of punishment for both the criminal and the officials who executed that punishment. In this way, unlike the administrative *qiushen*, or my translation ‘Case Review,’ *jianhou* draws attention to the lived experience (for both the jailers and the criminals) of imperial administration rather than the end product of either autumn review or death.

For magistrates themselves, the semantic difference between *qiushen* and *jianhou* was probably a non-issue: *qiushen* was written on documents describing the review process, *jianhou* on documents that described the human bodies within that process, and that distinction was second nature for the seasoned official. I try, for clarity, to use ‘Case Review’ and ‘the Review system,’ rather than ‘delayed punishment’⁶² and try to follow the Chinese terminology as often as possible.

Official Case Review Process and Time Table

On paper the procedure for processing delayed punishments through the review system is neat and, if not swift, at least well defined. The Qing code makes the case review procedure look simple:

⁶¹ Meijer, “Autumn Assizes,” 2.

⁶² I’m using these phrases in the place where my predecessors have used ‘assize.’ I will capitalize Case Review when referring to the system and use all lower case when referring to the action of reviewing cases.

All ([officials] *having jurisdiction over*) prisoners (*must begin with*) interrogation until the matter is clear (*and continue*) with the investigation and examination until the matter is completely handled. [These steps being completed,] if the punishment... is a death penalty, if it is in the Capital the Three Judicial Offices will decide the matter. If it is outside, the governor-general or the governor will examine [the case] to see if there is injustice. Then he will prepare a judgment according to the law (*for beheading or strangulation which will contain a statement of the facts and the law* [the name of the offence].) The Three Judicial Offices will review the matter and decide and report to the Emperor (*and wait until there is*) a reply.⁶³

This description lacks important details: for a holistic, and most likely idealized view of the process we can turn to administrative histories written in the end of the Qing. The *Qingchao xu Wenxian Tongkao*, the late Qing supplement to the Yuan period *Wenxian Tongkao*, was compiled by Liu Jinzao to extend the *Qing Wenxian Tongkao* past the Qianlong reign.⁶⁴ As this version was published in 1905 and compiled at the end of the nineteenth century, it reflects the Case Review system in retrospect. Still, this source clearly outlines both the broad history of the Case Review system as understood in the late Qing and the chronological requirements of this yearly judicial cycle. Publications like this one represent common knowledge among administrators, described in terms of the central judicial offices, rather than the local magistrates. They give us a snapshot of administrative goals and beliefs at the end of the dynasty and shouldn't be confused with descriptions of how the system actually worked. They do, however, offer an essential outline of the journey of a case through the review process. I offer a synopsis of the text here.

For the Board of Punishments, the Case Review calendar began with organizing cases for the emperor. During this process, which began in the first month of every year, the cases up for review were sent to various administrative offices around the capital, each of which added to the record in different color ink. Officials at the *xuexi si* divided cases into those to be executed, those to be delayed and those to be pardoned (*shi, huan, kejin*); this organization and their commentaries was done in blue ink. Next, officials in the *ceshen si* used purple pen to comment and send it back to the *qiushen suo* within the Board of Punishments. The *qiushen suo* (the Department for the Autumn Review) used black pen to collate information from all the offices reporting and added their own commentaries.

In the second and third months of the year provincial and local offices were informed about the decisions made at the capital. If further investigations were required they were completed by the local officials and reported up to the capital. In these months also, the governors (or governors-general) took the lists of prisoners to jails and called the names of the condemned.⁶⁵

⁶³ *The Great Qing Code*, William C. Jones, translator, (New York: Oxford University Press, 1994): (Article 411, p 393, ellipsis mine, all other notation in original translation). Jones' translation is based on the *Du li cunyi*, an early twentieth century commentary on the code and sub-statutes, thus Jones' translations reflect the Qing code in one of its latest manifestations.

⁶⁴ Liu Jinzao, *Qingchao xu wenxian tongkao*, 1894 (Shanghai : Shangwu yinshuguan, reprinted 1936) 9979b-9980a. Meijer attributes this portion of this administrative history to Chi T'ung-chün, "a department director of the Ministry of Justice" (Meijer, "Assize" 5 n11).

⁶⁵ "probably to show that they were there and still alive," Meijer, "Autumn Assizes," 4.

By the fifth month, input from outside authorities was finished, as was the Board of Punishment's involvement in the provinces. Cases where there was some disagreement about outcomes were then revisited. In the seventh month cases were considered and condensed in a few stages: first in the "discussion in the sections," which involved provincial authorities as well as the department for the autumn review and then in sessions at the Pavilion of the White Clouds called the "Directorate's Discussions."⁶⁶ At both of these events cases were commented on and condensed.

In the end of the eighth month the Board of Punishments and the "Nine Dignitaries" (not, as Meijer points out, nine people, but rather the heads of many judicial offices) met in an external chamber west of the "Golden water bridge."⁶⁷ They considered the review cases by revisiting the classifications and commenting on the lists produced in the previous 8 months of the year. Once finished those lists went back to the Board of Punishments on their way to the Emperor.

Before the 12th month, the Emperor would sign execution orders in the elaborate but brief (several days) review rituals. The lists of condemned the emperor signed were the culmination of the year's lengthy investigation and commentaries, streamlined to expedite the signing ritual. At this final case review the emperor himself certainly did not have the time to consider the details of every case. Even had he wanted to, the meticulously detailed *tiben* from which western scholars have produced such complex arguments about life under the Qing were not an element in this culminating performance of the emperor's administrative power. For any particular case the classification had already been made; the emperor's job in the late autumn signing rituals was to confirm the previous year's judicial decisions.

This chronological framework was second nature to all officials tasked with delivering case records before the emperor; comprehending this prescribed structure can allow us to understand how practiced law may have varied. In addition, this yearly outline itself has several important implications. First though the term *qiushen* indicates Autumn Case Review, organizing for that autumn ritual took the entire year. Second, though this yearly cycle looks neat on paper there was no way to avoid overlap from one year to another (this is an issue that will become clearer when we consider the annual Case Review cycle from the point of view of lower officials).

Third, and similarly mundane, is the sheer number of people and reports that came together to allow the emperor to preside over all the capital cases in all the empire for a single year. In order to present the emperor with a feasible work load for the annual proceedings, all cases went through many officials who all added their opinions. Through these many iterations cases had to be simultaneously and paradoxically reconsidered and stripped to their bare minimum. It was also essential to pick and chose which criminals' names were sent to the emperor for the autumn ritual: the swiftness of justice only left room for unambiguous, previously decided capital cases. Clearly not every criminal who was picked up in the previous year had his case processed in that year (this is an issue that will become, if not clearer, at least more fleshed out when we consider the actual administration of justice as demonstrated by documents rather than administrative guides).

⁶⁶ Here I use Meijer's English terminology here to translate Chi's text.

⁶⁷ The Nine Dignitaries itself would make an interesting topic for future research. I wonder if the composition of this board changed over time, reflecting changing values or politics.

Fourth, and perhaps most important, we can see from these chronological requirements that the emperor's job in the autumn rituals was never to consider case records or conflicting recommendations for executions but to *demonstrate* that he had confirmed the previous year's judicial decisions. The immediate audience for the review rituals in the autumn was limited to the officials involved, and documents recording the extent to which the general public followed this yearly performance is, of course, unlikely. But as the emperor signed away the lives of commoners in far away villages, he performed the role of an imperial leader—indeed of a *Chinese* leader—to the officials present, who could then transmit the outcome down the chain of imperial command through the provinces, eventually to the executioner himself. The performance of justice in these rituals was carefully cast, perfectly timed and impeccably scripted; the message of that performance, that the emperor was the final arbiter of punishment in the empire, certainly was not lost on the criminals waiting for his judgment, and most likely was clear, too, to the people who witnessed them die in the marketplace.

Having outlined some basic facts and terminology and considered the way that the administration of Review cases was supposed to function, let's move on to follow the journey of a case in order to understand more concretely the way that this administrative system worked in practice.

Disappearing Acts⁶⁸

In my attempt to illuminate the parts of the Case Review system that have previously been ignored, I here focus on documents that will be less familiar to students of Qing law and society. This description is not exhaustive; instead of illustrating the entire review cycle I attempt to make more visible some parts of the process of Case Review that were intentionally kept off stage. This discussion is meant to flesh out the general description of the Case Review process as outlined above. Scholars of Qing law will find familiar documentary sets missing from this description of the journey; in my attempt to peek past the proscenium and into the wings of the performance of justice I will ignore the very documents that have driven much of American-written legal history in the past decades. That is to say, my narration here is idiosyncratic and constructed to intentionally show the way that the structure of the review process required the reduction of information. I argue here that two parallel processes were essential to the administration of delayed death sentences: first, local officials made large numbers of captive bodies vanish on documents sent to central officials and second central officials made the very details local officials spent their time collecting vanish in their reports to the highest authorities.

1. Local Organization: Disappearing People

⁶⁸ Here I am translating Diana Taylor's terminology from a corporeal to a bureaucratic register. Taylor uses the rhetoric of disappearing acts to begin to re-appear that which spectacle makes less visible: "Under siege, spectacles tend to essentialize... even as they 'disappear' the traces of the performativity of that construction" (Taylor *Disappearing Acts* 24-25).

All criminal cases began the same way in Qing China: with an investigation by the local magistrate and his underlings. Murders, land disputes, smuggling, rebellions: local officials were responsible for gathering the relevant people and information in all of these crimes. Once the proper information was extracted from crime scenes, witnesses, victims and criminals, local officials assigned punishments and wrote detailed reports, which were then forwarded to higher authorities.

Crimes punishable with post-review execution were processed no differently. Any new capital crime had to be exhaustively investigated, the criminals caught, jailed and interrogated and reports written. All reports and people were then reviewed by the proper provincial and eventually imperial authorities; only after this first round of review did delayed and direct execution cases venture down different administrative avenues. I will forgo a detailed retelling of this first administrative go-round and consider only the aspects of journey of a capital case that are particular to delayed punishments.

Though all capital punishments were processed the same way initially, delayed and direct punishments were assigned from the beginning. And though death penalties could not be finalized by anyone but the emperor himself, the classification of criminal by punishment was one of the first, and arguably one of the most important, decisions made in all criminal investigations. The magistrate, as the court of first instance, assigned each criminal a specific punishment; this punishment was not only the primary object of inquiry by higher authorities, but also became an essential element of each criminal's identity throughout the criminal process. Prisoners are identified in jail rolls under four different headings: decapitation and strangulation with and without delay. Thus though technically only the emperor could assign a death sentence, local jails housed criminals bound for the Autumn Case Review ritual long before the review roll sheets were filled.

Because suggested sentences defined inmates, local officials faced an administrative challenge unique to the unit charged with holding criminals: captives had to be organized according to the year they entered the Review system. Thus local jail rolls⁶⁹ refer to "new" and "old" criminals to identify those prisoners whose cases needed to be organized in order to be sent to for the initial case review and those whose cases awaited either judgment or further investigation.

Criminals and cases entering this process were considered by many offices. Moving these people around took significant administrative organization (as I will outline in chapter four). Keeping people still also took administrative work: ledgers describing inmates awaiting review, prepared by county officials and sent to prefectural authorities, functioned both as jail rolls and as checks on jailers and other local functionaries. In accordance with the chronology rehearsed above, around the second month of each year local officials prepared lists of the criminals within their care. In these lists inmates were split into categories: new cases, old cases, criminals to be transferred, criminals not to be transferred, and criminals who had died. These lists are short and are seem to have been both combined (i.e. a single document listing criminals to be transferred and those not to be transferred⁷⁰) and separate (i.e. the document

⁶⁹ Examples: STF 28-1-60-39 (undated, within the years DG 12-29), 28-1-55-15 (JQ 25), 28-1-55-92 (undated), 28-1-60-34 (undated, presumably DG 19).

⁷⁰ As in STF 28-1-55-118.

listing the criminals to be transferred was prepared at similar times but physically a different report from the list of criminals not to be transferred).⁷¹

As an example, consider a ledger of new cases for review prepared in Daoguang 19 by the local punishments office in Baodi county. This brief document lists only two new cases requiring transfer to the prefecture.⁷² Both criminals are to be strangled after review, both are men from Baodi county. This list contains no other information about their crimes or status: in the organization of the second month it was important only to count the criminals awaiting investigation and confirm their place in the review process, rather than reiterate the case details painstakingly outlined elsewhere. In the second month of the year, as far as local officials are concerned, criminals in the review system were merely bodies to be enumerated. And thus county officials reduced these men to their essential identifiers: name, age, county of origin, and most important, their place in the justice system.

Criminals waited years in county jails for punishment, being reported on each year in this way. These (most likely poor and socially marginal) inmates were likely of little interest individually to the central authorities, as their cases lingered on the margin of the justice system, unfinished year after year. From the point of view of the capital, those criminals given repeated stays of execution were reduced to a line of text; they essentially disappeared (I will consider the issue of stays of execution in more detail in chapter five). Local authorities, however, were burdened with affecting this disappearance. Jail rolls are filled with 'old criminals' and 'criminals not to be transferred.' These rosters, along with the receipts for the money spent in criminal upkeep, are often the only indication to the historian that criminals awaiting review lingered in jail in large numbers:⁷³ as nothing needed to be done to further document their cases, the only record-keeping required was a brief acknowledgement of their continued existence.

⁷¹ Twentieth century archival organization makes it impossible to say if these informal lists were always sent together or if this practice changed over time: it is entirely possible that all of these reports were delivered together and only in the twentieth century became disarticulated.

⁷² STF 28-1-55-96 (DG 19/2/11).

⁷³ How large these numbers were remains somewhat mysterious, and to make a good estimate we would have to have access to local records for multiple counties for many years. Here in these two jail rosters from DG 15 for a single county within Shuntian Prefecture there are six old cases and two new ones; this proportion of old to new is common. To know conclusively when the criminals in these old cases were actually executed we would have to either follow jail rolls for this particular jail for a number of years or find these particular criminals mentioned in central documents; both of these tasks would be difficult considering the state of local and central archives. We also don't know to what extent old criminals were being held somewhere other than the jail. My reading in this one local archive leads me to conclude that first, in general old cases outnumbered new ones in local jails and second, old cases were a compounding problem for local officials, a problem that is not readily apparent on central documents or in the estimates previous scholars have made about the number of criminals executed empire-wide.

A criminal ledger of ‘old’ cases from Baodi county in Shuntian prefecture in the second month of Daoguang 15⁷⁴ parallels the ledger of ‘new’ cases cited above. This short communication between the Board of Punishments office in the county and that in the prefecture cites six criminals in the review system: five to be strangled and one to be beheaded. All are ‘old’ cases, in other words their cases were neither sent to the offices in the capital in the current year⁷⁵ nor were they newly entered into the review system in Daoguang 15/2. Five of the criminals listed here (surnames Yu, Wang, Li, Wang and a youthful 17 *sui* Mrs. Zhang) are identified, along with their ages and their county of residence, as “old Autumn Review [cases], criminals not to be transferred.” One criminal, surname Chen, is listed as an “old Autumn Review [case], a criminal *newly* not to be transferred.” The division between the five inmates not to be transferred and Chen, who is only newly not to be transferred, suggests that the other five criminals had been waiting for judgment for longer than a year. This chronological identification presumably facilitated record keeping at the prefecture, where criminals and their case files were received.

This slip of paper, along with the uncountable others like it in local offices the empire over, essentially documents the absence of administrative action. These six inmates were not involved in the review caseload for Daoguang 15, but the officials in charge of their upkeep recorded their continued existence in the jail to demonstrate no wrongdoing. Records like this one may have been accompanied to the prefecture by information about criminals whose cases actually were considered among the year’s Review cases. Unlike those of Yu, the two Wangs, Chen, Li and the young Mrs. Zhang, the cases transferred for consideration in Daoguang 15 were meticulously recorded and re-recorded in case reports, leaving a redundant paper trail⁷⁶ everywhere from the county jail and the governor general’s office to the Board of Punishments and the Department for the Autumn Review. While these six ‘old’ criminals waited in jail for a response, from the point of view of the central authorities, their cases seemed to disappear.

As far as local authorities were concerned, inmates like these very much did not disappear. They, like all (living) men and women in jail, required food, shelter and occasionally medicine. Even non-living inmates required action, as I will outline further in chapter three. The yearly accounting of criminals is not the only place where we see traces of the effort put in to keeping criminals incarcerated: periodically these men and women were assigned an actual cash price. A brief receipt from Daoguang 5 identifies the cost for transferring three new criminals to be strangled with delay as three and a half taels each, ten and a half taels total.⁷⁷ This receipt between the prefecture and the county identifies the criminals only by name and punishment; it is not an essential part of the case record but rather part of the accounting intended to keep corruption in check. In the future we might search

⁷⁴ STF 28-1-55-69 (DG 15/2)/

⁷⁵ As this communication is dated DG 15/2, I assume that these cases were ‘old’ in DG 14 as well: I think it is safe to say that all of these criminals had entered the Case Review system in DG 13 or earlier.

⁷⁶ A *contemporary* paper trail that is: collecting all the paper produced on a single case is now, if not impossible, at least quite improbable.

⁷⁷ STF 28-1-55-37. STF 28-1-55-39 is another example from DG 4, same cost per prisoner.

profitably for similar clues as to the number and situation of inmates waiting each year for judgment in the financial records of local archives.⁷⁸

Periodically, for cases still awaiting judgment from the capital, local officials reinvestigated and re-reported to the Case Review authorities.⁷⁹ This second (and third, and potentially twenty-second) round of investigation concerned not the facts of long-ago committed capital crimes (which were also open to re-investigation should the governor, Board of Punishments, or any other official up to the emperor request it), but of the changing situation of these ‘old, not to be transferred’ inmates. While review criminals sat in jail for years on end, life outside the county jail meandered on; if the parent or sibling of an inmate sentenced to execution after the Review died, that criminal’s eligibility for commutation changed. Local magistrates then had to confirm the information about these criminals’ families (possibly delegating investigative authority to the ubiquitous yamen runners), recommend or not recommend commutation and then forward these reports to the central authorities.

If commutation was the recommended course of action, these criminals might have their cases considered sooner rather than later: these ‘old, not to be transferred criminals’ might find their cases moved on to the central Review registers for a new year. If so, their cases would reappear to again cross the emperor’s desk in preparation for the yearly rituals. If not, those cases continued to be the responsibility only of local officials, staying off the desks of central authorities.

That responsibility was not small. In Daoguang 19 the officials in Baodi county reported the ineligibility of a group of ten ‘old, not to be transferred’ criminals for imperial favor based on their family situation.⁸⁰ This report, like most substantial documents concerning the organization of criminals awaiting Case Review, begins by citing the order requiring local officials to make this report. “Every year,” this repeated administrative imperative reads, officials “must investigate and report on all the old Review cases who are not to be transferred.” The legal requirement to stay abreast of the changing family situation of all criminals in their care and report yearly to the prefecture briefly but clearly shows that those cases not actively under consideration by imperial authorities continued to create work for local officials, even if, as is the case here, all ‘old’ criminals were found not to be eligible. These criminals and their families, who from the point of view of the central authorities seemed to drop off stage, continued to be the responsibility of local officials.

The report itself consists of short descriptions of the crimes each criminal was sentenced for (“Han Yunrui used a knife to injure Li Yude”) followed by short descriptions of their family situations (“the criminal’s father has died and his mother is alive”) and the terse pronouncement: “no need for imperial favor.”⁸¹ This list, like the ones confirming the existence of criminals in jail, was compiled in the second month when higher authorities conducted their annual tallies of existing criminals. Here, again, is the documentation of no

⁷⁸ The cost of Case Review from the local level is potentially another avenue for comparing different localities and times, as well.

⁷⁹ I will take up the topic of the reduction of sentences again in chapter five, but here I lay out the basics to explain how those responsibilities fell to the local officials.

⁸⁰ STF 28-55-88 (DG 19/2).

⁸¹ *liuyang*, imperial favor, or reduction of sentence, a topic I take up in chapter five.

required action in the capital. But the documentation of inaction by the central Review authorities is, somewhat paradoxically, documentation of action in local offices. The amount of administrative work that went in to keeping these waiting cases organized at the local yamen, the work that it took to keep central rolls neat and clear, the work of disappearing for years only to be reconsidered at the proper time, is staggering and stands in stark contrast to the emperor's simple, if extensive, Case Review ritual.

Included in this document denying these 'old' cases commutation is a more complex description of a case concerning a criminal from another county. Local officials were not only responsible for 'old' Review criminals in their care but also for those who passed through or had family within their borders. Waiting inmates were overseen by a yearly system integrated both vertically (from the local magistrate to the emperor) and horizontally (between county jails). This horizontal integration could be interpreted two different ways: if we choose to see the justice system of the later Qing as overloaded and ineffective, horizontal integration allowed local officials to pass a few 'old' criminals on to other localities, retaining in their jails and work loads only those inmates clearly within their jurisdiction. A more optimistic view of the empire in its later days could see effective communication between localities, an integrated bottom-up system capable of retaining the masses of criminals waiting in jails year after year. In either case, the Case Review system's horizontal and vertical integration functioned (with the work of the local officials) to make a massive re-investigation system appear simple at the central level.⁸²

2. Capital Organization: Disappearing Data

After local officials finished the initial round of investigation and reporting, all death penalty cases continued on their journey to higher authorities. In the first round of case review, these cases made the same circuit as other criminal cases, from the province to the capital, being considered and signed by all the proper officials in between. Here I will illustrate a different but related vanishing act, one that consisted of the reduction of the detailed case histories required for passing judgment into single lines of text, or in some cases, merely numbers.

By the time a case re-entered the justice system for the secondary review demanded by the designation of punishments as delayed (which was most likely many months after the crime itself) all the details of the case had been collected and narrated into the lengthy routine memorials (*tiben*) used by central agencies. Though there are exceptions, most cases were reported in *xingke tiben* or routine memorials for the Board of Punishments. Though we often think of a routine memorial, with its extensive quoting and repetitive language, as the primary documentation for criminal cases, the case review process produced other often overlooked but no less important paperwork. Routine memorials were created in the first round of criminal investigation, and though they were amended if some major change occurred in the secondary review demanded by delayed punishment, *tiben* do not automatically represent the extra administrative step we call the Case Review process. Though routine memorials carried

⁸² Future versions of this project could include a section on the disappearing details at the provincial level. I would ideally use *zhaoce*, lists sent from governors and governors-general to the emperor to properly flesh out that discussion.

the information essential to decision making, in the regular course of affairs they were not significantly changed by or for the extra case review done for delayed death sentences.

The criminals themselves entering the Case Review process outlined above were either ‘new’ or ‘old’ offenders whose cases were put back into review. Unless some official requested that a local or provincial magistrate do (or re-do) an investigation, the criminal himself was not involved in this second round of consideration: his job was to attempt to stay alive while he waited in jail for punishment. In this part of the review process the offender himself was represented through his words recorded in the routine memorial.

As we saw in the outline of the Case Review timetable in the *Qingchao Xu Wenxian Tongkao*, in preparation for the final review rituals, case records visited many offices, gaining commentaries on the way. At some point in the process for non-contentious cases, the multiply commented on routine memorials provided more information than was strictly necessary: once cases were categorized into criminals to commute, stay or execute the details of each particular crime ceased to matter. To make the annual administration of justice possible, the Board of Punishment yearly listed the capital criminals to come before the emperor in documents called yellow registers (*huangce*), named for the yellow paper they were written on. All capital cases were indexed in several places, at several different points in the process, and for several different purposes; *huangce* is a name used not for a single kind of list but for this entire category of lists. The Board of Punishments was primarily responsible for producing these *huangce*,⁸³ and in that process produced a kind of statistical abstract of punishment for the entire empire, to which one could look to find the number of *jian* (documents or items) within each province for each year for each type of crime. This kind of *huangce* allowed the Board of Punishments and the other authorities involved in capital case organization⁸⁴ to keep the review process organized as well as to communicate to each other and to the emperor the extent of the criminals to be punished each year, without including extraneous details about the cases themselves.

While these indexes are simple in form and function, they are far from simplistic. In function, they served a straightforward administrative goal, to centrally list each year’s capital cases and to organize those cases as they were reviewed by the many offices that needed to see them. Their form supports this function: each case is stripped of its details and indexed by province and type of crime. These documents represent the final stage of the disappearing act begun at local jails and supported by local authorities: as seen through *huangce* capital punishment in the Qing is simple, neat, tidy. These documents were meant to be considered in addition to the routine memorials (the *tiben*) into which the long process of criminal investigation was poured; no Qing bureaucrat would have turned to them to make final (or preliminary for that matter) case decisions. They are instructive for us as they outline and define the system of capital punishment of which the Case Review process was one important part.

⁸³ I am influenced here by Meijer: “At both levels of discussion the Censorate and Court of Revision were supposed to assist, but the work was mostly done by the Board. The rearrangement consisted of divesting the province’s description of the cases from unnecessary details...” Meijer, “Autumn Assizes” 4-5.

⁸⁴ Nine Dignitaries, Grand Secretariat, Censorate, Court of Revision, etc.

Though the simplest *huangce* are appealing as a kind of statistical abstract of capital punishment for any given year I believe their exhaustiveness is misleading: drawing quantitative conclusions from the content of these documents without the context offered by (at the least) longer case reports and ideally also a knowledge of local judicial practices would be naïve at best.⁸⁵ Keeping these caveats in mind, however, we can look to the form of these documents to reveal and reiterate some important values within the administration of capital punishment, values that would not be visible either if we approached the administration of justice on a case by case basis or if we stopped our investigation at the spectacular rituals of Case Review and execution. As they change very little in form from one year to another,⁸⁶ I speak here in generalities in order to identify and articulate a few simple administrative values. When an example is called for I'll look at the lists for Jiaqing 10⁸⁷ (1807) and Daoguang 3 (1824).⁸⁸ Though these documents were written in different reigns, they are identical in form and quite similar in content. These indexes are in two parts: the first listing numbers of cases by province and the second listing each case individually.

These lists explicitly concern capital cases⁸⁹ from the twelve months of each year, giving rise to the simple, but worth reiterating

Value number 1: capital punishment was separate from other kinds of punishment

All capital cases, not just those in the Review system, are cited and counted in these documents. The yearly abstract begins by citing its purpose: to index all the capital cases for the Board of Punishments. The raw data on capital punishments is then organized according to province: from Anhui to Guizhou, the Board of Punishments has listed the number of capital cases within each of six categories of crimes, along with the total number from that

⁸⁵ See James Lee, "Homicide et peine capitale." Lee numerically analyzes some subset of the *qiushen xingke tiben* collection held at the Genealogical Society of Utah. He seems to assume that Case Review cases constitute all of the capital cases in the empire (rather than only those sentenced to delayed execution). I also wonder if he is counting cases rather than executions, as his numbers are quite similar to those that Telford cites (Ted A. Telford and Michael H. Finegan, "Qing Archival Materials from the Number One Historical Archives on Microfilm at the Genealogical Society of Utah," *Late Imperial China* 9 no. 2 (1988): 100). In any event it is difficult, without knowing which documents Lee consulted within each microfilm roll, to know specifically where these numbers came from.

⁸⁶ The majority of the *huangce* I consulted are housed at the Genealogical Society of Utah and run from the QL reign through the early twentieth century. (Many of the *huangce* held at the number one archive in Beijing were not available for consultation during my residence there). The collection is not complete, and not specifically cataloged for the later periods, meaning that *tiben* and *huangce* are microfilmed next to each other and the researcher has to page through entire rolls to determine which are which. This organization combined with the somewhat nebulous definition of the term *huangce* makes estimating the number of these documents available difficult.

⁸⁷GSU 1357770, item 14 , JQ10.

⁸⁸GSU 1357770, item 25, DG3.

⁸⁹The phrase is *zhanjue zhong an*, literally "Serious cases [to be] decapitated or strangled."

province and finally the total number for the empire. For example, a quick glance at the front matter of these *huangce* reveals that in Jiaqing 10 in Guixi, there were 170 capital cases,⁹⁰ in Daoguang 3 there were 208.⁹¹ The segregation of capital punishments from the rest of the justice system here is, first of all, a reflection of the Qing's insistence that capital cases be considered by the highest authority. This elevation of capital cases above other criminal cases also produced the need for many indexes to keep the paperwork straight. In other words, shipping death penalty cases to many offices for consideration and re-consideration both reflected a concern for the uniqueness of the death penalty and made this separation necessary.

If we consider the segregation of capital cases more philosophically, these *huangce* not only enable but also demonstrate the oft-cited imperial reluctance to take a human life. By organizing all death penalty cases into a separate administrative channel the Qing justice system enacted the belief that punishment by death was, at the very least, fundamentally different from other punishments. Pushing that insight further, we can see in this organization the belief that the death penalty was enough unlike the other corporeal punishments to require the direct oversight of the emperor. This simple observation may seem repetitive, but the ease with which early Western scholars and China observers have dismissed Qing justice as cruel, backwards or based on some pre-modern mysticism prompts me to reiterate here the way that the very form of the Qing justice system took the death penalty seriously. The rational administrative form that we see here supports a function which early Western observers dismissed as irrational or superstitious.

These *huangce* likewise list capital punishments both before and after Case Review, giving rise to

Value number 2: Delayed death sentences were an integral part of capital punishment⁹²

As there are four ordinary types of capital punishments in the Qing code, the two post-Case Review punishments comprised nearly half of the capital punishment system. Though my own particular focus is on execution with delay, in these summary documents all death penalties are listed together. In trying to clarify the complex review system at the capital it is easy to lose sight of the fact that throughout the Qing capital punishments were all processed at the same time and by the same officials. Separating imperial punishment into two distinct administrative channels is, to a certain extent, the legal historian's anachronistic choice; *huangce* indexes remind us that officials viewed executions with and without delay as parts of the same system. And it would be just as inaccurate to consider execution with delay an oddity of Qing justice or an empty façade which did not end in execution: what I call the Case

⁹⁰ GSU 1357770, item 14, JQ 10.

⁹¹ GSU 1357770 item 25, DG3

⁹² The split between execution with delay and direct execution is not evident to the casual observer of *huangce*; this obscurity has complicated previous scholarship. Without careful attention to the kind of *huangce* one is looking at these numbers can be confusing and misleading.

Review ‘system’ is half⁹³ of capital punishment under the Qing. Additionally, that direct and delayed execution are not separated here in these indexes not only reflects, but also enables the imperative that the emperor review all capital cases, not only those with delay.

The completeness of these indexes, their claim that they have recorded all capital criminals, both direct and delayed, for an entire year, required a radical clerical brevity. The next value returns us to the trail of disappearing data:

Value number 3: in central documentation criminals are reduced to their essential identifiers (identifiers which are nearly the opposite of those used by local officials)

To allow the emperor to even run his eyes past every capital criminal’s name, *huangce* listed cases by their province, type and date of crime, and date of case report. In these Board of Punishments indexes, particularly in the simplified section where all specifics of names and crimes are missing, prisoners no longer needed to be classified according to the year they entered the Review system, rather they have merged together to become a single class of criminals to be executed.⁹⁴ As we have seen, the local officials tasked with actually caring for criminals’ bodies identified every capital criminal first by their punishment (execution with or

⁹³ Half in terms of type of punishment, not necessarily in terms of number of executions ordered or carried out. The consultation of 20 volumes of the *xingke shishu* for the Daoguang period (a collection held at the number one archive in Beijing) indicated that many, if not most of the routine memorials that crossed that emperor’s desk carried post-Case Review punishments (for the years DG 28 and 29, for example, in all but two volumes inscriptions calling for post Case Review punishments outnumber other inscriptions). Though we should be wary of any attempts to quantify the actual number of punishments carried out based on the *xingke shishu*, as it is merely a register of the case records the emperor consulted rather than a register of executions ordered or human beings processed, the *xingke shishu* data enforces my guess that in general post-review punishments occupied administrators more than direct executions. My impression from *huangce*, however, is that delayed executions and direct executions were carried out in similar proportions. My conclusion from comparing these two archives is thus that while post Case Review criminals took an enormous amount of administrative effort on the part of judicial officials at all levels of the bureaucracy, direct executions were more likely to be carried out than delayed executions; in other words, for any criminal delay truly did mean there was a possibility the condemned would not be executed.

⁹⁴ The number of death penalties processed each year can thus be counted, using a portion of the *huangce*. The number of executions carried out could even be estimated, if we could use the portion of the archive that reports criminals executed, those cited as *jueguo renfan*. These summary reports, however, are difficult to locate consistently: more of the *huangce* archive represents reports on the processing of cases, rather than the executions of punishments. There are other places where execution numbers are cited, but they are somewhat piecemeal. As an example, for Zhili a single page memorial reports on an investigation into the number of criminals executed in DG 20 in this one province. It separates these punishments into categories of punishment as well as categories of crime (GSU 1872445 item 553-1 DG 21/5). Interestingly, the number of direct executions (20) is similar to the number of post-review punishments (25).

without delay) and then by their chronological place in the review system. In every correspondence--from the highly formal memorial to scribbled receipts for the bodies of the dead--local bureaucrats focused on the amount of time it took to bring criminals to justice. In these Board of Punishments indexes, central officials focused on presenting all capital punishments for a single year as a tidy set of statistics which left no room for chronological overlap and gave few hints as to the length of time some of these cases had waited for judgment. (As we will see in chapter four, this could be quite a long time.) This classification scheme stands in direct contrast to local officials' organizational scheme and makes it impossible for central authorities and historians alike to guess what percentage of criminals in any given year were initially sentenced in that year.

The set of data produced by removing all monikers of individuality from all capital cases to be considered in a year was massive and potentially useful.⁹⁵ Qing lawmakers had at their fingertips information that was likely essential for reviewing capital cases but in addition could have been mobilized in any number of ways, thus:

Value number 4: by considering the state of capital punishment as a whole, human (and possibly systemic) errors could be identified and (potentially) addressed

These registers allowed the Board of Punishments to count the total number of death penalty cases, without regard to the particular type of death penalty.⁹⁶ Indexing all capital punishments also offered bureaucrats an interesting insight into the criminal and judicial worlds for any particular year. Aggregating yearly lists of capital criminals allowed the Board of Punishments a glimpse of the way the empire was functioning: a bureaucrat or emperor could see, for example, that in Daoguang 3 more people were punished for sexual crimes in Jiangsu (11) than in Fengtian (3),⁹⁷ and neither were particularly common. Similar comparisons could be made between years or reigns or regions. These lists' primary function was to expedite the emperor's signing of orders, and their historical quantitative value is clear but they also served, contemporarily, as a statistical abstract of both crime and punishment.

⁹⁵ They are also useful, with some important caveats, for historians interested in (carefully!) drawing conclusions about the number and type of crimes committed in any particular year. For example, in Zhili in JQ10, for 18 premeditated murder cases, 7 were sentenced to direct decapitation, 2 to decapitation after the Reviews and 9 to strangulation after the Reviews. Of the direct decapitation cases two were to have the criminal's head displayed. Similarly in the section on unlawful sex, of the 7 cases 4 were sentenced to strangulation after the Reviews, one to decapitation after the Reviews, one to direct decapitation and one woman's crimes brought her the infamous *lingchi* punishment. A more detailed survey would be needed, but it seems to me that the most often assigned punishments were at the two extremes: direct decapitation and delayed strangulation, while the least common was *lingchi*, but of the common execution methods, the least used were the two punishments in the middle: delayed decapitation and direct strangulation. GSU 1357770 item 14, JQ 10.

⁹⁶ It might be noted here that if the PRC was willing to collect (and publish or leak) data like the Qing did that the world wide conversation on human rights and the death penalty would be a very different one. Numbers are a dull but potentially sensitive part of empire.

⁹⁷ GSU 1357770 item 25, DG 3.

Though I have no proof that these are the documents which were referenced, I have seen annual numbers on the sudden rise in crimes cited in imperial edicts (*shangyu*) aimed at reforming the review system.⁹⁸ Without the data these *huangce* record such imperial reforms would not be possible, as the trends they aim to correct might go unnoticed. In these mundane indexes we see more evidence that the Qing justice system took self-regulation seriously: though many facets of imperial justice were stubbornly unchanging, at the very least these numbers allowed the potential for identifying errors, and ideally for responding to them.

Recording all capital crimes throughout the empire in one neat Board of Punishments document required a large amount of raw data: in both Jiaqing 10 and Daoguang 3 just listing the numbers by crime and province took over 10 pages. This simple but large data set had to be organized coherently. The primary organization in these *huangce* is geographic, a reflection of the flow of judicial paperwork from province to the central authorities. These terse preliminary indexes are secondarily organized by type of crime, which brings us to

Value number 5: All capital crimes must fall into proper categories, without overlap

The burden of judicial decision making fell on local officials, who were required to bring the diversity of criminal life in line with the stark categories of the foundational legal documents of the Qing. Applying the provisions of the code, commentaries and edicts to every crime was at the heart of sentencing procedure; this procedure demanded that each case be designated as a specific pre-defined crime, even if only by analogy. While that complex judicial decision making process is visible in detailed *tiben* and other texts,⁹⁹ *huangce* offer no such insight. Rather, in the *huangce* we see the end result of this unyielding judicial value: the neat categorization of decidedly messy capital crimes. In *huangce* capital cases are listed in six categories of crime: theft, salt (smuggling), unlawful sex, homicide, killing in affrays and crimes against hierarchy. In the beginning of these *huangce* the number of cases in each of these six categories is given, followed by the total number of cases (*jian*) in each province. There was no room for those lengthy discussions of potential overlap or judicial error in categorization which the student of Qing justice has come to expect. Though having six strict types of crimes in the yearly index of capital crimes seems a simple bureaucratic syllogism (people are executed for committing one of these six crimes, therefore every case in the register of capital crimes falls under one of these six headings), when viewed in the absence of other documents the neatness of these categories can be deceptive, which leads us to

(anti-)Value number 6: Judicial decision making and the review process are not important in the final reckoning of capital cases

The first part of these indexes refers only to the total number of criminals to be executed. In comparison, the second part of these documents, which includes a small amount

⁹⁸ For example, SYD 1454, p 456, DG 28-12-17.

⁹⁹ This decision making process was the focus of English language legal history for many years before the opening of mainland Chinese archives, when suddenly Western scholars opened the door to find a Technicolor munchkin land of Qing social details recorded in criminal case documentation.

of information on every criminal listed, seems positively wordy. This second section is likewise organized according to province first and crime second; within these categories each criminal is listed by punishment and name, along with the name of the victim. A short description of the crime follows, along with the dates of the crime and the date of the final case record. For example, in the section for Zhili in Jiaqing 10, under the crime heading “murder:”

One woman to be strangled. Mrs. Li née Zhang killed her younger brother, Zhang Yegou, [and was sentenced to] strangulation after the Reviews. The crime was committed in Jiaqing 9/6 and the memorial is dated Jiaqing 10/4.¹⁰⁰

Huangce are the polar opposite of the detailed case reports late twentieth century historians of Chinese law and society have gravitated towards. Not only are the rich details about geography, criminal, victim, circumstances, and crime that we expect in longer reports missing, but we also can’t see the details about the complex decision making (and justification) process that lead each of these crimes to be assigned one of five capital punishments. The information missing in these indexes may have allowed officials to take stock of capital crimes as a whole, but in return these *huangce* obscure the possibility each of these cases hold to *not* end in the death of a criminal. Put differently, indexes alone create the impression that execution was applied quickly and uniformly across the empire. The entire investigation process is invisible, replaced by tidy statistics.

Also invisible is the place each of these cases is in the review process. We know from both local documents and the categorization of cases at the capital level in to executable, commuted and stayed cases that many cases were considered in multiple years (and I will consider this process at length in chapter five). This index to capital cases obscures the overlap between years by giving the impression that these are all criminals who were tried, sentenced and executed in one particular year. In reality, we do not know how many of these cases resulted in punishment, what punishment they may have ultimately earned, or when they were punished. *Huangce* perform a simple task: they outline in one place all the capital cases considered in a single year. But they also perform a vanishing trick: when considered separately from the case records they index they suggest a simple justice system that we know to be far more complex.

With these records we glimpse the final stages of a case’s journey through the Review system, but the journey of the criminal himself was far from over. Though the executions in these statistical compendiums seem inevitable, the emperor’s consent only began the final chain of events which ended in the death of a criminal. As most criminals were executed near the jail in which they were imprisoned, most executions themselves were carried out far from the emperor, in repurposed marketplaces the empire over. That action must have generated paperwork (the order to execute, the hiring and paying of an executioner, the choice of a time, the list of prisoners to be executed, etc) but finding traces of those particular mundane orders has proved to be difficult.¹⁰¹ Central authorities did, however, complete one final reckoning of the prisoners executed in a type of *huangce* that looks much like the *huangce* listing criminals

¹⁰⁰ GSU 1357770 item 14, JQ 10.

¹⁰¹ Chinese scholars have repeatedly discouraged me from expecting to ever find such documentation, telling me that the reason this type of paperwork is scarce is because writing about execution itself was taboo.

to be executed. These annual reports, titled “*jueguo renfan*” (executed criminals), truly end the case’s journey from the perspective of the Board of Punishments. In this final reckoning for the imperial government, criminals are identified by their name, native place and type of execution.¹⁰²

The journey from the record of every detail of the criminal’s world to the final identification of the executed criminal by the manner of his death is a journey of reduction. Through a legal process so precise it might be called ritualized, criminals, crimes and the administrative work it took to bring them before heaven’s justice were erased, leaving only the statistical remains of an empire intent on benevolently enforcing criminal law. This journey made possible the emperor’s own Autumn Case Review ritual: without simplification of the case record there is no way that the emperor’s work would have been accomplished in a short time. But it also left the Qing open to the kind of criticism Bodde casually engages in, that at essential junctures some sort of Oriental “magic” stood in for rationalism. I contend that the only “magic” here is the labor intensive slight of hand of a complex administrative vanishing act.

Conclusion

If we judge the Qing based on two spectacular performances: the emperor signing orders for capital punishment and criminals being executed, we might see, as previous Western scholars have, an empire performing its control, through the all-powerful figure of the emperor, over those subjects who have failed to conform. I contend that the Qing as seen through the lens of the Case Review system is far less arbitrary and superstitious than previous characterizations would have it.

Though delayed execution might be a powerful tool for demonstrating power through the performance of benevolence,¹⁰³ keeping the bureaucracy surrounding execution with delay performing at capacity was impossible without these two reductions of administrative information at the central level: first the disappearance of people and second the disappearance of data. The clerical difficulties created by this redundant system are myriad: overlapping chronological years produced paperwork crunches, criminals waiting in jail for years for punishment fell ill and died, overlapping documents were produced in different offices, the involvement of many levels of justice in every capital case made for ever more paperwork. When seen purely in terms of imperial power, the benefits of delayed punishment may at some point have been outweighed by the difficulties of the system, difficulties that were kept from the emperor’s, and to a lesser extent from the Board of Punishments,’ view. The tiered disappearing acts that allowed the Son of Heaven to consider every criminal’s name in one sitting also partially concealed the irregularities that threatened to overwhelm this unique legal form.

¹⁰² Melvin P. Thatcher, “Selected Sources for Late Imperial China on Microfilm at the Genealogical Society of Utah” *Late Imperial China* 19, no. 2 (1998): 125.

¹⁰³ Again, the racial / ethnic dimension is out of the scope of the current project, but we might think of delayed execution as a powerful tool for demonstrating *Manchu* power through the performance of *Chinese* benevolence.

When seen from below, from the point of view of the petty officials and criminals facing capital punishment, the benefits of delayed execution were, perhaps, obscure. Though the empire promised criminals sentenced to delayed execution a second chance for redemption, it also submitted them to, at the very least, another year of questioning and waiting. And though the redundant oversight of the emperor himself absolved local officials of the responsibility for taking lives, the amount of clerical work required for every last murderer must have given those bureaucrats pause. Local officials and criminals alike were both subjects of imperial rule and subjected to imperial rules: this is an observation I will return to repeatedly in the thematic chapters that follow.

The cycle I have outlined here constitutes a large part of the Qing justice system. I believe that post review punishments generally outnumbered direct executions in terms of punishments assigned, and, as I will show in the following chapters, they certainly occupied local officials more. (Punishments executed is a different story: I believe that direct and delayed executions were carried out in something closer to similar numbers.) The overlapping and redundant nature of the Case Review cycle meant that the delayed processing of criminals produced more criminals to process; we can see how this system might have compounded the problem of over crowded jails. Criminals, however, did not only suffer or escape justice; endings other than execution or exoneration also accelerated people out of the Case Review system, accounting, perhaps, for the seeming impossibility of such a redundant and protracted judicial process.

Numerical reckoning aside, the administrative details of imperial rule matter: they illustrate for us the lived (and died) experience of punishment. In the next chapters I will parse and investigate several aspects of this experience, beginning with an administrative challenge generated by the system outlined here: the death in jail of criminals awaiting review and punishment.

Chapter 3. No Other Cause: Death In Jail by Illness

There was, in Qing China, a punishment more insidious than decapitation, a death sentence that took longer than strangulation. Death by jail was a ordinary ending for an ordinary tale: the prisoner, sentenced to death, waited in jail for the day he was to be taken to the marketplace and executed in public, but that day never came. Instead he succumbed to any number of communicable diseases, malnourishment, mistreatment or some ghastly combination of the three. The Qing authorities didn't exactly encourage such anonymous deaths, but they didn't do much to stop them either. The regular criminal just disappeared into the system, and his family and community weren't terribly surprised: no one expected jails to be clean well-lit places to live out your remaining days as a condemned murderer.

Or so goes the general perception of pre-modern jails by scholars of punishment the world over. With this perception, in one fell swoop we dismiss the experience of criminals, the work of ordinary officials and the way that the justice system encompassed both of them under less-than-ideal circumstances. The situation of criminals dying in jails is more complex than our general perception of 'death by jail' leads us to believe. A systemic failure of justice should not be ignored, even if it is a world-wide phenomenon easily explained with contemporary contagion science.

In this chapter I begin to unravel this unintended but ordinary experience of life under and within Qing law by considering on their own terms the bounty of cases in which criminals died in prison. How were the accidental deaths of captives dealt with by the imperial bureaucracy? What do these administrative choices reveal about the empire behind these deaths? Did accidental death in prison undermine either the power or the benevolence of Qing rulers and officials? In exploring these questions I use a repeated failure of the Qing judicial system to come to understand more clearly the goals and values of that system. The deaths of prisoners whose lives ended not in the market place at the hand of an unnamed executioner, but quietly before their appointed time, within the walls of a local jail should not be and, I contend, were not as silent as we've allowed them to be.

I will first look at some of the broader issues surrounding the death of captives in a pre-carceral system of punishment. After this brief grounding, I discuss cases of criminals who died in jail, ostensibly from illness. I have organized these case histories to demonstrate the administrative process through which officials approached cases of death in jail. Throughout these cases I glance at some of the rules, regulations and procedures the empire employed to deal with death in jail. Throughout I focus on day lighting the work that went into processing dead criminals and their cases in order to illustrate how the Qing used paperwork to turn a potentially dangerous performance of a failure of justice into something more dismissible.

Death in Jail: Broad Categories and Issues

Students of legal history know that imprisonment as a punishment in and of itself is a relatively recent concept. World wide, pre-modern jails (by any definition of modern) were not seen as places of punishment but as places where criminals and those accused of crimes

were held to await both case review and punishment. It was not until the twentieth century that criminals were placed in a facility specifically for the purposes of removing them from society and reforming their character. Before the twentieth century, jails throughout the world (with, arguably, the exception of a few penal colonies) were places where people detained by a justice system waited, for varying lengths of time, for that justice system to decide how they were to be treated. Qing jails were no different.

Unlike modern jails and prisons, with their vested interest in encouraging personal reformation, pre-modern jails (or gaols¹⁰⁴) were not nice places in either theory or practice. At best, Qing jails protected inmates from the elements and provided them with enough food to eat. At worst they were little more than human stables (and indeed, there were certainly horses treated better). Though the feeding and upkeep of prisoners was budgeted for at every level in imperial China, the trickle-down economics of corruption meant that the stated budgets were probably higher than the money actually spent on this most base of budgetary considerations. A certain amount of neglect, especially for the most undesirable of criminals, can safely be assumed. Still, criminals were (usually) fed.

They were also (theoretically) housed. Jail buildings were usually within the local governmental complex but near the outside, a choice that may have increased neglect and decreased contagion. On a daily basis criminals without any business outside the jail would have come in contact with a number of other people: low level officials, other criminals, witnesses in cases, family members. On those days criminals were taken in front of the magistrate or transferred to other offices they would have come in contact with many other people: at the least anyone doing business in the yamen and at the most anyone traveling on the same road (I investigate the topic of transfer in the following chapter). Criminals with unknown contagious illnesses could have spread them far and wide; criminals who were clearly ill and kept in their cells could also have spread their diseases to other inmates as well as to the officials caring for them. Illnesses from the outside would have effected jailed criminals the same way they did anyone else in the complex, with the added factors of poor living conditions and overcrowded cells. Winter and summer were cold and hot; a criminal might expect to last longer in the spring or fall.

Local authorities were responsible for keeping jails clean in the face of these realities. In his widely cited handbook, Huang Liuhong suggests that magistrates attend to the regular cleaning of the jail in order to keep illness to a minimum:

¹⁰⁴ Often the distinction between modern jails or prisons and these pre-modern holding facilities is signified with an archaic spelling: historians (including, in reference to China, Frank Dikötter, *Crime, Punishment and the Prison in Modern China* (New York: Columbia University Press, 2002)) have used the spelling ‘gaol’ to indicate the difference in the character of these facilities. While such a lexographic indicator is useful for scholars who discuss both sides of the modern / pre-modern divide, as it offers them three terms (gaol, for pre-modern holding facilities; jail, for modern temporary holding facilities; prison, for modern facilities enacting the punishment of imprisonment), my focus on the pre-reform period in Chinese history simplifies the issue. For the purpose of this project I am only referring to those Qing facilities where criminals were held to await punishment and case review, and I will use the modern spelling, jail. (I also use ‘prison’ to vary the language a bit.)

In prison, space is limited and the air is often polluted. The crowded situation and foul air can easily cause sickness. When it spreads, it can develop into an epidemic, which is abhorrent. It is imperative for the magistrate to order jailers to perform the sanitary routine once every three days in wintertime and once every day in summer. Dirt and refuse should not be allowed to accumulate in the compound. The latrines should always be kept clean, and the manacles and instruments of torture should be washed and scrubbed frequently. Sitting and sleeping quarters should be swept and dusted often.¹⁰⁵

We can add to the litany of jobs magistrates assigned to clerks and runners the up-keep of the jail. It is difficult to find documentation of these mundane procedures in legal archives, but Huang's insistence on keeping the torture implements clean serves as a reminder that local officials were proactively concerned with keeping prisoners alive.

We can attribute death in jail of prisoners to three primary categories: illness, mistreatment and suicide. Not surprisingly, the archival record displays more evidence of the illness, though cases of mistreatment and suicide were also documented, sometimes to punish the officials involved.¹⁰⁶ In addition to not knowing conclusively how many people died in jail due to each cause, it is also impossible to know much about the actual cause of death for any particular inmate.¹⁰⁷ An official might quietly help a criminal commit suicide to rid

¹⁰⁵ Huang Liu-hung, *A Complete Book Concerning Happiness and Benevolence* Fu-hui ch'üan-shu: *A Manual for Local Magistrates in Seventeenth-Century China*, Djang Chu, Translator and Editor (Tucson: University of Arizona Press, 1984) 312. *Fuhui Quanshu* was originally published in the Kangxi reign and republished through the nineteenth century.

¹⁰⁶ Though the Qing code is not the best place to look for the administrative reality surrounding any particular failure of justice, it does prescribe punishment for officials who allow improper deaths in their jails. Abuse of prisoners is specifically prohibited:

Article 398 *Abuse of and Cruelty to Prisoners*

Every jail guard who (*arbitrarily and*) without grounds within the jail is abusive and cruel and strikes and injures a prisoner will be sentenced on the basis of injuring during an ordinary affray... If as a result (*of striking and injuring or reducing supplies*) death results (*then it does not matter if the prisoner was sentenced to death. It is not proper that he should die* [in this way]. *Sentence to*) strangulation (*with delay*). (*The Great Qing Code*, Jones, trans. 372. All notation in original translation.)

This article applies to those abusive guards that physically injured prisoners, as well as to those who failed to furnish prisoners with enough food and warmth to stay alive. The clarification that the kind of prisoner who dies of abuse has nothing to do with sentencing the guilty guards is particularly telling: officials and their staff are not to quietly impose their own death penalties.

¹⁰⁷ Counting the accidentally dead in Qing China accurately presents a significant challenge, as those dead were listed differently in different archives. It is my impression from perusing the jails section of the *xingke tiben* collection and the archives of Shuntian Prefecture that many people died en route to punishment. But it is difficult to know how many people died, and in what proportion to who was executed; primarily because of the overlapping nature of local and central archives as well as the overlapping nature of the reports themselves (as I outline in this chapter). Perhaps these numbers are not specific because the Qing had a vested

himself of a burden.¹⁰⁸ Certainly an official guilty of killing a prisoner by mistreatment made his life easier (and perhaps longer) by representing that death as one of illness. Certainly, also, such dissembling was periodically caught by higher officials and prosecuted. But beyond acknowledging that such cases must have existed, it is difficult to penetrate the case record beyond the writings we have.¹⁰⁹ In this chapter I focus on the administrative process following those deaths that were caused by (or were said to be caused by) illness.¹¹⁰

interest in burying those deaths in paperwork. In “Selected Sources” Thatcher identifies *jianfan binggu* as a category within the central Case Review materials listing prisoners died in prison; this might be a better place to start a more comprehensive count (Thatcher, “Selected Sources” 125). I read no such examples in the Utah archive, though my reading was far from exhaustive. We could also guess that a good number of people died by looking at the number of cases marked for execution versus the number of cases marked for commutation of some sort, but as I will clarify in chapter five, commutation occurred at so many points in the Case Review process that those numbers are even more difficult to come by. For now, I will have to leave numerical speculation at the observation that many people died each year in many different localities, so many that there was a complex, codified, ingrained administrative process designed to deal with this particular outcome of the extended Case Review system.

¹⁰⁸ The Qing code expressly forbids such behavior, confirming that it was a concern:

Article 399 *Giving Prisoners Knives to [Use to] Escape*

1. Every jail guard who gives a prisoner a knife or other thing (*such as poison*) which (*enables a person*) to kill himself or escape from his fetters and handcuffs will receive 100 strokes of the heavy bamboo. ...If (*it results*) that the prisoner (*in the jail*) kills himself, sentence to 80 strokes of the heavy bamboo and penal servitude of two years.” (*The Great Qing Code*, Jones trans. 372) And Huang Liu-hung’s handbook is also clear on the specific danger of guards murdering captives and representing those deaths as illness:

Some prisoners are killed by inhuman treatment at the hands of jailers who try to extort bribes without success... Some prisoners are simply murdered by jailers who have been bribed by their enemies... When a notorious and dangerous criminal is jailed, officials sometimes fear that he might escape and cause further trouble, so they simply have him killed, and they report to their superiors that he died of illness. (Huang, *A Complete Book Chu*, trans. 308-9.)

Magistrates depended upon their underlings for the mundane details of prison management, but this reliance gave those functionaries ample opportunity to mistreat prisoners and pass their abuse off as illness.

¹⁰⁹ In “Wrongful Treatment of Prisoners,” Harrison used cases in the *Xing’an Huilan* to discuss the issue of captives dying of mistreatment. This 1964 article (the reference to Bobby Kennedy as Attorney General is particularly arresting) aptly demonstrates the legal system’s ability to right itself in response to abuse, and its real but contradictory interest in doing so. As Harrison’s work in 1964 was naturally based on a limited set of didactic cases it is difficult to draw conclusions about how many people died due to this kind of mistreatment. Judy Feldman Harrison, “Wrongful Treatment of Prisoners: a Case Study of Ch’ing Legal Practice,” (*Journal of Asian Studies* 23, No. 2 Feb., 1964): 227-244.

¹¹⁰ Quinn Javers has considered suicide as a general topic; suicide in jail remains to be fully investigated. (Quinn Javers, “A Social History of Suicide: Ba County, Sichuan, 1890-1900,”

So far I have outlined factors contributing to the morbidity rate in any pre-modern jail (and, as recent history shows, in any holding facility). In one deadly way, however, the Qing justice system was unique: the Case Review system demanded the holding for long periods of time of any criminal within its purview. As I have outlined in chapter two, the annual Case Review cycle required prisoners to be in jail for different lengths of time depending not only on the swiftness of justice but also on the season of their arrest. As the rolls of criminals awaiting review and execution went to the emperor in the autumn and executions were carried out in the winter, local officials had to organize cases and criminals by summer or earlier. The unlucky criminal arrested and assigned delayed execution by strangulation or decapitation in the late summer would most likely wait for the next year's cycle for his case to be considered. He would then sit through the winter in a local jail, perhaps being transferred to a higher court for investigation and back (a journey I discuss in detail in chapter four). During those months an illness would have any number of opportunities to find a willing and poorly-fed host and a vituperative official would have any number of opportunities to further reduce the prisoner's physical condition.

All of these unfortunate outcomes held the potential to demonstrate, to the general public and to any one official's superior, a bureaucratic failure. While the systemic causes of death in prison are important, more germane to my overall interest in the experience and execution of capital punishment is the way that the empire and its functionaries incorporated those failures into their master performance of benevolence and power. I turn now to particular cases to see how those deaths were represented. As in all Qing bureaucratic reportage, documents are available at many levels, from the county jail to the final reports that crossed the emperor's desk; these different reports demonstrate different parts of the process of responding to an accidentally dead criminal. I approach this topic from the bottom up to emphasize both the process of demonstrating the righteousness of the treatment of the accidentally dead as well as the complex power of central reports to gloss over the amount of administrative manpower needed to clean up (or hush up) an accidental death. By making plain the behind the scenes work that went in to the judicial system's response to this unintended outcome of holding people captive I hope to bring to light some of the goals and values of the Qing judicial and Case Review system, to demonstrate again the ways that imperial benevolence was asserted through these administrative procedures, and point out the investment the Qing put into that performance at all bureaucratic levels.

Local Procedure and Errors: the Case of Zhang Enrong

In the 6th month of Jiaqing 19, Zhang Enrong, a prisoner in Baodi county, 80 kilometers southeast of Beijing, took ill and died. His timing was fortuitous; Baodi officials may have been particularly concerned with the way that prisoners who died of illness were treated in Jiaqing 19. On Jiaqing 19/2/29, county officials received an order from their superiors at the Shuntian prefecture which made clear the importance of reporting, with alacrity, on convicts who had died:

Conference Paper, Association for Asian Studies and International Convention of Asia Scholars Meetings, Honolulu, March 31, 2011.)

If there are prisoners in this year's Autumn Review who have died in jail, [they] must be reported [to superior offices]... When organizing [each year's Review, these deaths] shall be memorialized with the current review investigations... Immediately prepare a report which deducts [the dead]. Do not omit the dead's names, and give a detailed report of every criminal.¹¹¹

Prefectural officials made it very clear, in other words, that county officials were not to allow the dead to slip through the cracks.

Within 10 days the same officials received another, similarly imperative order, one which clarified that prisoners to be transferred to a superior administrative unit for the annual review must be dealt with by the twentieth of the third month. This second order requires that the prisoners newly entering the review cycle must be both investigated and transferred quickly, and with the proper payment of 3 liang 5 qian; this clarification was financial as well as administrative.

Like the previous order, this one unambiguously requires that local officials investigate and report on any review criminals who will not be transferred because they have suffered accidental death by illness while waiting in jail. This document lists the information that must be included for each criminal entering the review, such as "convicts who have or have not died of illness" and "[convicts] who must do sacrifices or care for their relatives."¹¹² All of this information: accidental deaths, the family status of criminals, the cost of prisoner transfer, is standard in the central review documents from both before and after the Jiaqing reign; these are clearly reminders rather than rule changes.

These two orders, while not punitive, are less than cordial. It is clear that in Jiaqing 19 some superior office to Baodi County attempted to streamline the review process. An important part of that clarification involved properly and swiftly reporting on the accidental demise of criminals in local jails. The lack of reportage on the deaths of criminals before they could be entered fully into the review rolls may have been a local issue or it may have been part of an empire-wide problem; either way, enough convicts were dying to merit these reminders.

In the midst of these requests Zhang Enrong fell ill. Perhaps because of these curt reminders of the way that dead prisoners should be treated, his unfortunate and ordinary death was carefully documented and multiply investigated over the year following his death. Here I'd like to back up a bit and look at Zhang's story from the beginning (or, for him, the beginning of the end), in order to illustrate how local officials dealt with ill and dying captives.

Zhang first appears in the Baodi county archives as a criminal transferred to the province for the Autumn Case Review. In Jiaqing 19/3, Zhang was transferred under guard through Xianghe county. The communications surrounding this transfer describe both the criminal and the process of his movement. First, Zhang himself is described, presumably as a precaution against escape or so that he not be confused with some other criminal:

Newly entering criminal [to be] strangled after Case Review criminal Zhang Enrong: fully shackled, wearing [the] red pants [of serious criminals], 46 years old, has a small

¹¹¹ STF 28-1-55-5 (JQ 19).

¹¹² STF 28-1-55-4 (JQ 19).

dark beard. Right thumb has the *ji* pattern (non-spiral whorl pattern), other fingers are all *dou* (whorl pattern). Left hand 5 fingers are all *dou*.¹¹³

This receipt also records a transfer fee of 3 liang, 5 qian.

A document internal to the local punishments office lists the guards' names, along with a request to send notice that he was received at Xianghe county. "jailed Review criminal Zhang Enrong. Guards Xue Yongfa, [surname unclear] Yu.... [subordinate] guards: Li Rui, Zhang Maosheng."¹¹⁴ This "jail list" is dated 3/12.

Another request dated Jiaqing 19/3 concerning the transfer of Zhang Enrong includes an 'escort list' which describes the objects and records sent with him:

Newly entering Review [to be] strangled criminal Zhang Enrong... is locked and sealed, one short document [is attached and information on the transfer is included in] a short document and a long document [with the] receipts. The guard has a carrying pole receipt, and the description [of the prisoner including his age] on one sheet.¹¹⁵

Baodi county officials are here being careful to transfer properly and record meticulously the movements of new review criminals: this streamlining may reflect the order cited above suggesting that the transfer of criminals be executed properly.

After his examination for the Autumn Review in Jiaqing 19/3, Zhang returned to the Baodi county jail. A ticket assuring his return to the county in Jiaqing 19/5 reads: "Criminal Zhang Enrong came back, shackled, to the county."¹¹⁶ He was not 'home' long, however, before he took ill. The reports on Zhang's illness begin, notably, before he died; the county officials were careful to inform their superiors about the state of the criminal in custody. An undated¹¹⁷ written pledge from the jailer begins the documentation on Zhang's illness: "written pledge of guard Li Cheng: Zhang Enrong on the 11th of this month got sick and ate little."¹¹⁸ A blurry handwritten amendment suggests that the doctor was also called. This testimony was copied into the next most complete (but still rather informal) draft report, dated Jiaqing 19/6/19, where county officials state: "This year on 6/15 the guard Li Cheng reported that on the 11th the jailed Zhang Enrong got sick and was eating and drinking little... Zhang Enrong saw the doctor, and took several doses [of medicine]."¹¹⁹ Two days later, a more formal report to the authorities at Shuntian prefecture repeated this information: Baodi county "reports to Shuntian prefecture that this month on the 16th, according to guard Li Cheng, Zhang Enrong got sick on the 11th of this month. [He was] not eating and couldn't drink water because of his throat."¹²⁰

The procedure that appears to have been followed in this case closely reflects the outline in Huang Liuhong's handbook:

¹¹³ STF 28-1-55-7 (JQ 19/3).

¹¹⁴ STF 28-1-55-10 (JQ 19/3/12).

¹¹⁵ STF 28-1-55-8 (JQ 19/3).

¹¹⁶ STF 28-1-56-16 (JQ 19/5).

¹¹⁷ We can surmise that the jailer's pledge was taken on 6/15 or thereabouts, as it is quoted in the later reports.

¹¹⁸ STF 28-1-56-26

¹¹⁹ STF 28-1-56-27 (JQ 19/6/19? (day unclear)).

¹²⁰ STF 28-1-56-28 (JQ 19/?/21 (month unclear)).

When a prisoner is sick, the jailer should file a prisoner's sick report, and a physician should be sent to look after him. The records of diagnoses and prescriptions should be kept on file. During a prisoner's sickness one of his relatives, after a careful search which proves that he is free of smuggled objects, is permitted to enter the prison to take care of him.¹²¹

We do not have clear records of Zhang's family visiting him during his relatively brief illness, though his father, as we will see, plays a role after his death.

While Huang's handbook sketches out the actions of the officials in the face of an ill criminal, the documentation of Zhang's illness displays the development of the reports those local officials made up the chain of command. A clerk took the written pledge of the guard and inserted it into the draft document four days later. Two days after that, a report with the same information was penned and sent to the prefecture for consideration. Three days later, on Jiaqing 19/6/24, the Baodi County officials again reported on Zhang's condition to their superiors, echoing much of the same information: "[The previous report states that] this year on 6/15, the guard Li Cheng reported that the criminal Zhang Enrong took ill on the 10th. He was drinking and eating little."¹²² This report cites more information about Zhang's crime ("Zhang Enrong quarreled with Wang Qifeng over the repayment of a debt and killed him by hitting him in the stomach with a carrying pole"), as well as more information about the other officials at the prefecture that need to be notified regarding his illness. A semi-legible handwritten note on the cover suggests that the response to this report at the prefecture was to request that the doctor's report be sent up as well.

Though the first date of Zhang's illness is reported as both the 10th¹²³ and the 11th,¹²⁴ he was certainly dead by the 25th, a fact which is confirmed in a flurry of brief written pledges, all of which have illegible dates or are dated the 25th. These pledges seem exhaustive: the father,¹²⁵ cell mates,¹²⁶ two different guards,¹²⁷ and the doctor.¹²⁸ These testimonies read similarly to each other and similarly to other pledges regarding the accidental death of a criminal in custody. Additionally, two lists of these pledges survives,¹²⁹ cataloging the names of the people who testified. The first, undated, reads simply:

List

Doctor: Li Chengshun

Xingshu: Huang Jianyou¹³⁰

¹²¹ Huang, *A Complete Book*, Chu trans. 310-311.

¹²² STF 28-1-56-18 (JQ 19/6/24).

¹²³ STF 28-1-56-18 (JQ 19/6/24).

¹²⁴ STF 28-1-56-27 (JQ 19/6/19? (day unclear)), STF 28-1-56-28 (JQ 19/?/21 (month unclear)).

¹²⁵ STF 28-1-56-15 (JQ 19/6/23), 28-1-56-31 (JQ 19/6).

¹²⁶ STF 28-1-56-14 (JQ 19/6/23), 28-1-65-32 (JQ 19/6).

¹²⁷ STF 28-1-56-23 (JQ 19/6/25), 28-1-56-25 (JQ 19/6/25), 28-1-56-33 (JQ 19/6).

¹²⁸ STF 28-1-56-24 (JQ 19/6/25).

¹²⁹ The second list is nearly identical; only the order of the names is switched, and it is titled slightly more specifically, "punishments office list." This second list is dated only "the 6th" (STF 28-1-56-21); I believe that date must refer to JQ 19/9/6, as explained below.

¹³⁰ Huang is called a 'xingfang' in STF 28-1-56-21.

Guard: Li Cheng
cell mates: Zhang Jiurong, Liu Mi
The dead's father: Zhang Shun¹³¹

This short list confirms that all pledges for this case survive.

The father also appears to have signed a pledge confirming that he picked up the body:

Written Pledge

Zhang Shun, 71 years old [document ripped], the father of the already dead criminal Zhang Enrong

testifies that [he has taken possession of] the body of Zhang Enrong. Investigation shows that he died because he was sick; there was no other cause.

Jiaqing 19/6/22¹³² Zhang Shun [followed by a hand written cross: Zhang's mark]¹³³

Naturally, all of these rather informal slips of paper were collated and properly re-written before they were submitted to higher authorities. An informal document combines these testimonies in one place, seemingly condensing them for the report that was to follow. To these assurances the official who wrote the preliminary report added brief recitations of Zhang's crime, the dates of his transfer and the status of his case within the review system. Zhang's father is quoted as knowing many of these facts:

Zhang Shun, whose son killed Wang Qifeng by hitting him in the stomach with a carrying pole and returned this year on 4/27 from the Autumn Case Review, got ill.

The doctor gave him several doses of medicine that didn't hurt him... on the morning of the 25th he died because he was ill.¹³⁴

It seems questionable that the dead criminal's father knew and testified to the date that his son returned from the Autumn Case Review; that date does not appear in his simple written pledges. Rather, this information about his son has been projected into his voice. This kind of information embedded in the quotes from the testimony of witnesses and criminals is familiar from more formal reports on the death in prison of ordinary criminals; here we catch a glimpse at the moment when general information adhered to those simple, repetitive pledges.

Other curious changes occurred between the written pledges and this collection of testimonies. The way Zhang's cell mates are quoted within this summary document suggests that, at least initially, officials did not always attempt to smooth over the death of a convict.

Li Mi and Zhang Jiurong were his cell mates. Zhang was in this year's Review at the provincial capital on 4/27. He contracted an illness and didn't eat much. On the 25th guard Li Chen called the doctor, who gave him several doses of medicine, and he died in the 25th in the morning.¹³⁵

The seeming inaccuracy in dates within the section quoting the cell mates is an interesting misprint. I doubt that the doctor was called the same day he died in the morning, but I wonder

¹³¹ STF 28-1-56-37 (undated).

¹³² This handwritten date is difficult to read, but looks like a 22. Either it was a misprint, or I am failing to read a damaged document properly; the bulk of the documentary evidence shows that Zhang Enrong died on the 25th, and this written pledge clearly came after his death.

¹³³ STF 28-1-56-17 (JQ 19/6/22).

¹³⁴ STF 28-1-56-22.

¹³⁵ STF 28-1-56-22.

why this first collected report did not clean up their dating; such a simple fix might have saved them some trouble down the road. Perhaps this initial collection of testimonies was done by a member of the office staff that did not feel empowered to smooth over the chronological edges; in any case it seems that that transparent reporting did not immediately take a back seat to official self-interest, and we should remember that local archives may hold clues to such behavior, often dismissed as lost in the unknowable gulf between representation and practice.

These small textual changes suggest that immediately after the death of a criminal the officials and clerks in charge were already considering the formal report that would follow, but not necessarily tidying up inaccuracies. It seems the first step in dealing with the accidental death of a criminal is always to collect information together. That step was achieved in a rather short amount of time; the written pledges of the various people involved are dated the day of Zhang's death and this note combining all of that information is dated within 5 days of his death.¹³⁶ Presumably the more formal report took longer, but not because the officials dawdled while the body grew colder.

Before his body grew cold, another medical professional may have been brought in to confirm the assertion of Zhang's death by illness. Though a coroner is not listed among those questioned, a diagram which I believe to be of Zhang's body is included in this archive.¹³⁷ This simple front and back image was a standard form that could be filled out: there are places to describe the body from head to toe. This particular chart is rather difficult to read but we can glean a few facts about the state of the corpse. The body was yellow in multiple places: the complexion on the face, the left and right of the chest and abdomen are all described as yellow. The abdomen was collapsed. Both eyes were shut, and the left hand was tightly clutched into a fist. These details are consistent with death from illness, as outlined in the *Xi Yuan Jilu*:

When people die from illness, the body will be emaciated, the flesh will be sickly yellow, the mouth and eyes closed, the abdominal area sunk in, the whites of the eyes jaundiced, the hands slightly closed...¹³⁸

Sunken yellow flesh and closed eyes, in particular, offer evidence that Zhang died of illness, and did not die suddenly.

Perhaps more important than the details of the body, this standard visual representation of a deceased prisoner's body reminds us that textual descriptions of the

¹³⁶ My guess is that it is actually dated 6/25, the date that Zhang died, but the final number is somewhat illegible. In any event, it seems that the county officials moved quickly in their written response to Zhang's death.

¹³⁷ This document is rather damaged and I am following the archivists' guess that it belongs in the Baodi County archive near Zhang's file. There is no way to verify this guess, but in any case it is a valuable example of the use of coroner's chart for a criminal who passed away in custody. We are more accustomed to this kind of *shidan* used in coroner's reports for the victims of crime.

¹³⁸ The *Xi Yuan Jilu*, a coronor's handbook, was initially written in the Song, and amended and revised through the nineteenth century. McKnight's translation is based on the earlier text. Song Ci, *Xi Yuan Jilu* (The Washing Away of Wrongs), Brian E. McKnight, trans. (Ann Arbor: Center for Chinese Studies, The University of Michigan, 1981): 3.6b / 87, p. 139.

accidentally dead were, at the local level, usually accompanied by testimony of a different type. This diversity of representation assisted local officials as they demonstrated the lack of mistreatment, but I have not seen such illustrations reproduced in the routine memorials that worked their way up to the emperor and the Board of Punishments.

In short, at least on paper, Zhang's death was on its way to being well documented hours after his death; this seems to be a case of at least nominal administrative efficiency. Local officials also seem to have followed the procedure for prisoners who died of illness as Huang outlined it:

In case of death, the jailer must file a report indicating that the prisoner suffered from a certain disease, was treated by a certain physician, and died on a certain date. The magistrate must still visit the prison, examine the corpse, and interrogate the inmates himself. Then he reports to the superior yamen for permission to bury the deceased. If the deceased has relatives, they may claim the body for burial after the superior yamen has granted permission.¹³⁹

But despite this case appearing to have been processed appropriately, something seems to have been amiss. Two months after Zhang's death, in Jiaqing 19/8 and 19/9, this case was revisited. It seems that as the final report from county officials (which does not survive) made its way from the county to the prefecture, something was missing.

A report dated Jiaqing 19/9/c9 makes it clear that by early in month 8, officials at the provincial Surveillance Commission had read the report on Zhang's death and found the documentation to be lacking:

Baodi county reported on Zhang Enrong, a to be strangled criminal who died in jail and was involved in the case where Wang Qifeng was killed by being hit in the stomach. [They reported that] there was no maltreatment in this death. ... In the case of a new review criminal who has died by illness whatever the reason, in accordance with the statutes, officials shall investigate and make a detailed report. In the case of the to be strangled criminal Zhang Enrong, a newly entering Case Review criminal who died in jail, the county did not clearly request an official to investigate and report; this is an example of violating the statute.¹⁴⁰

This quoted report goes on to order an official to "investigate if the guards did or did not mistreat" the criminal. The document ends with an injunction that the investigation be carried out at the county before the 16th of the month.

That time table appears to have been followed. On 19/9/11 the order to investigate was copied into a preliminary document listing the people to be interviewed. The list of witnesses is identical to the previous one: the father, the doctor, the guards, the cellmates. By Jiaqing 19/9/20 most, if not all, of these witnesses had, again, assured officials in writing that Zhang Enrong had died from no other cause than illness. The cellmates confirm that "the guards did not mistreat [him], he was truly sick."¹⁴¹ In one voice both guards confirm that "the jailed criminal Zhang Enrong got sick and died, there was no mistreatment, all of this is true."¹⁴² And the doctor offers a quick recitation of Zhang's crime before confirming "the criminal

¹³⁹ Huang, *A Complete Book* 311.

¹⁴⁰ STF 28-1-56-36 (JQ 19/9/c9).

¹⁴¹ STF 28-1-56-40 (JQ 19/9/20).

¹⁴² STF 28-1-56-41 (JQ 19/9/20).

came back to jail from the Autumn Case Review, got sick and died. There was no other cause. The guards and officials did not mistreat him, all of this is true.”¹⁴³ It does not appear that this second round of investigations turned up a witness willing to revise his story; indeed, the new testimony echoes the pledges of 3 months prior. The focus in this second inquest, however, is clearly on demonstrating that no one working in the jail was at fault for the death: officials at the prefecture needed the clearest documentation possible that this prisoner was not mistreated before they could report to their superiors.

The trail of the case of Zhang Enrong goes cold soon thereafter: the archive preserves a single document dated Jiaqing 20/5/29 reporting that the investigation has concluded at the county level. What the prefectural authorities determined is unknown, and likely destined to remain so.¹⁴⁴ As recorded in county level documents, the initial investigation of the case appears to have been done with alacrity, and done similarly to the way it was done in both previous and following eras. The reinvestigation of this case, however, illustrates more fully a push in Jiaqing 19 to streamline the administration of the accidentally dead, at least in Baodi County. It seems that proper, rather than just efficient, reporting was a serious goal.

In the case of Zhang Enrong, that goal was enforced both by the orders that I cited at the beginning of this discussion, and by the oversight of the officials at the prefecture. This case illustrates, in perhaps dull detail, the specific information collected during the local procedure officials followed as well as the ways that specific information may have been questioned by higher officials. Mid-level officials depended on local officials to collect this information, but not every bit of it went into their own reports. In these omissions and amplifications of evidence we can see the values the Qing justice system put on particular kinds of evidence, and the ways that it drew that evidence together to avert potential criticism.

Physical Evidence in Mid-level Reports: the Case of Lin Gui

Lin Gui wasn't in jail as long as his punishment warranted. His case, though worthy of a post-Review punishment, never entered into the Autumn Review system: he was set to enter into the Qianlong 16¹⁴⁵ Review cycle but died too soon for his case to be considered. Ill prisoners like Zhang Enrong and Lin Gui might have freed up space in the overloaded Case Review system; we might expect their deaths to be met with relief or a hasty tidying up of

¹⁴³ STF 28-1-56-42. This assurance is undated, but as there are so many testimonies from Zhang Shun, the doctor, it makes sense to assume that at least one of them was from this second round of investigation, and the language about the lack of mistreatment is consistent with the other pledges from this later period.

¹⁴⁴ I am inclined to assume that this case did not continue, as the documentation for this case was particularly rich.

¹⁴⁵ In the organization of this chapter I am privileging type of evidence over chronology: as the local archive of Shuntian prefecture is more extensive in the Jiaqing reign, I have put Zhang Enrong first to outline local procedure. Clearly procedure may have changed within the Qianlong and Jiaqing reigns; I hope in future versions of this project to use additional archival sources to clarify the chronological dimensions of the administration of accidental death in jail.

details. Instead, as we saw in the response to Zhang Enrong's death, such ordinary deaths were met with an intense effort to produce an abundance of documentation showing that officials were not to blame in the criminal's death.

Authorities in Fujian outlined the circumstances surrounding Lin Gui's death in a *ti* [memorial] directed to imperial officials. The section of this report from the prefect rehearses some, but not all of Lin Gui's symptoms before death.

The criminal Lin Gui, sentenced to strangulation after Case Review, was old and sick. His spleen was depleted, and he had diarrhea. According to the doctor, medicine was no help, and on Qianlong 16/2/c1 he died.¹⁴⁶

These mid-level officials' goal in reporting Lin Gui's symptoms and elderly condition before death was to mobilize the evidence of the ill criminal to demonstrate their lack of culpability in his demise: by showing the prisoner's condition before he died they preempted any accusations of mishandling. The prefectural officials who wrote this particular report presumably had no opportunity to confirm these symptoms in person, as Lin Gui died in a county jail and it was not standard practice for the prefect to attend to ordinary ill prisoners, rather they are enumerating bodily evidence based on the reports produced by lower level officials. Those reports likely included the kind of details that we saw in the case of Zhang Enrong, including, possibly, a coroner's chart. This prefectural report, based on the report of lower officials with closer access to the dying prisoner, asserts imperial benevolence in the face of an unintended death; this report leaves no room for the higher officials to place blame on their underlings. Thus, the last days of Lin Gui's life assert the proper behavior of a host of officials, from the attendants at the local jail to the prefect himself.

In the manner of all Qing documentation, even this brief preliminary report quotes many levels of investigation, beginning with the county officials in the jail where the criminal passed away and continuing on to the provincial and Judicial Commission authorities. The embedded reports quoted in this report are familiar to any reader of Qing documents, but the various information included from different offices opens a window onto the values different evidence held for reporting accidental death in jail. For example, the information here about Lin Gui's original case (a murder involving opening a coffin and disturbing a body) comes from the Judicial Commissioner, and is both brief and secondary, as the content of this report is Lin Gui's death in prison. The original crime, indeed the criminal himself, is less important than the circumstances surrounding his death. In death a criminal who died accidentally ceased to be processed as an individual whose crime had offended the social order; as soon as Lin Gui died the worry was no longer the proper execution of justice but proving that the Qing justice system had not failed.

A close look at the entire report reveals the many details lower level officials documented about Lin Gui's final days. The report from within the jail itself is quoted in more length:

Lin Gui [was] sick for a long time [or: he caught a disease of old age—multiple meanings of *jiu*]. His spleen was depleted, he kept dozing off and he was completely swollen. He gasped for breath and had diarrhea. The doctor couldn't help and on QL 16 / 2 / c1 died. The investigation showed no maltreatment in this death.¹⁴⁷

¹⁴⁶ AS 028240-2.

¹⁴⁷ AS 028240-2.

These further details about his final days (his trouble staying awake, the swelling, and the gasps for breath) are quoted but not summarized in the prefect's own report. Why were some symptoms chosen for the final report over the others? The many officials involved in writing (or collating) this report seem to be following an unspoken hierarchy of evidence, where either some physical symptoms demonstrate official conduct (or lack of misconduct) more clearly than others or some physical symptoms are more believable when quoted by higher authorities than others. In the case of Lin Gui, the details that seem to be highlighted are his age (though his exact age is avoided here, perhaps to further ease administrative difficulties) and the extent of his disease before he wheezed his last breath. These officials chose to emphasize Lin Gui's age in their narration of his last days: the unspoken assumption is that old age shows more clearly that a criminal died of illness rather than misconduct. An elderly criminal, it seems, was more likely to pass away under the care of a benevolent jailer than younger more fit ones.

Whatever the narrative choices, all of the evidence cited in this preliminary report is based on an analysis by professionals of the criminal's *living* body. The inmate's live body, as opposed to his corpse, is not an evidence set that shows up in all reports on a death in prison: many *xingke tiben* concerning the death by illness of inmates either have no need for or no access to the evidence of the inmate's living body. Having not seen the final *tiben* based on this case we do not know if that was also true here: it is possible that the criminal's symptoms were a standard part of many lower level reports but were cut for brevity once the investigations were finalized and the final version graced the emperor's desk. In either case, in this short report, these local officials are particularly assertive about the oldness and sickness of this criminal prior to his death.

The information missing in this report also demonstrates that lower level officials had to work within a restricted time frame to demonstrate their lack of misconduct. Lin Gui died in Qianlong 16/2 and this report from Taiwan bears the printed date Qianlong 16 / 4/c10 and the hand written date Qianlong 16/4/28; this seems a rather quick turn around for a far-flung province. Preliminary investigations into and memorials on the death in prison of ordinary criminals were expected swiftly, so swiftly, it seems, that some magistrates felt they did not have time to wait for a full investigation and instead based their reports only on the evidence at hand. The *ti* concerning Lin Gui fails to mention other details that a full and final report on his case and death would require, such as his age (though that may have been intentionally left out) and the state of his family obligations (which certainly would have been investigated as his case was prepared to enter into the Review system). Balancing the requirements for full documentation with the requirements for swift reports must have been a daily consideration for local and provincial officials: a consideration that centrally produced documents, with their tidy quoting of all previous reports, do not make clear. If the balance between documentation and quickness was mis-handled, an official might draw the wrong kind of, indeed deadly, imperial attention.

This focus on the details of Lin Gui's final (living) days in jail, whether we consider it to be standard procedure for an initial report, an extra bit of information that these particular officials included to prove their innocence, or the product of the swiftness of local justice, demonstrates an important tenant of the Qing justice system: physical evidence produced by the human body has an intrinsic truth value. When assessed by the correct professionals (i.e. doctors, coroners and midwives) the evidence produced by a criminal's body is irrefutable;

while officials can be questioned, symptoms can not. Minor officials, such as doctors and jailers, were imagined to be kept in check by the magistrates in charge of their offices. Though lower level functionaries were often pointed to as a source of corruption, within the yamen, where the opportunities for corruption were fewer, they were more rarely blamed for false reports. Magistrates were of course responsible for the content of all reports issuing from their offices, but it seems that the professionals in charge of the care of the bodies of inmates are less often pointed to as the fount of false reports. Perhaps the fact that they were detached from any information gathering (and thus not responsible for torture) and report writing (and thus not responsible for creating a coherent crime narrative) and professionally interested only in keeping alive or reporting on the death of criminals exempted them from the opportunity for corruption and explains the value placed on their testimony. In any event, the information doctors coroners and midwives gleaned through the examination of criminal bodies was relatively unassailable and thus indispensable in making the case that inmates were treated properly and died of no cause other than illness.

The belief in the intrinsic value of the evidence produced by dead and dying bodies is the hallmark of Qing reports on any violent crime. Murder victims and murder suspects were treated with the same kind of clinical analysis. But reports on the death in jail of criminals make it particularly clear that the Qing administration believed that human bodies, when assessed correctly, tell no lies. By basing their assertion that no mistreatment occurred on the physical body of the inmate himself, as well as on the doctor's attempts to cure him, the prefectural officials reporting on the death of Lin Gui appeal to the belief that while officials can be questioned, symptoms (and to a certain extent the professional who reports them) can not. We do not know what actually killed Lin Gui, nor do we know what happened with this ordinary case beyond this initial report, but we do know that the officials overseeing him, from the jailor and the doctor to the provincial magistrate, chose to represent his death as one of illness; the most irrefutable way they could do that was to recount, clearly and with medical accuracy, the gory details of this elderly criminal's final days in jail. The benevolence of lower level officials was automatically on trial when a criminal like Lin Gui died. Officials took care, in the face of a challenge to their benevolence, to highlight the physical evidence that most clearly narrated the story of the criminals' deaths as illness rather than mismanagement.

Testimony in Mid-level Reports: The Case of Bao Dezhang

I turn now to another mid-level report. As we saw in the case of Zhang Enrong, testimony from living people surrounding the dead inmate was also essential to demonstrating the lack of official mistreatment in the death of an inmate. An ideal report on the death of a prisoner includes assurances by others who witnessed the death and confirmed that it was the result of illness. The list of people who might potentially give such testimony will be familiar from the case of Zhang Enrong, and this list is long: jailers, medical professionals, family members, other inmates, and anyone else who might have come in contact with the prisoner in his last days. A report on the death of Bao Dezhang, a murderer awaiting a post- Review punishment, illustrates the value the Qing placed on such testimonies.

Bao Dezhang died in jail on Qianlong 11/r3/16. This *ti* was penned in Qianlong 11/6, after preliminary reports had been taken, but before a final *tiben* made its way through the Review system. This mid-level report is not the final word on Bao's death, but rather ends in a request that provincial officials investigate the case made by local officials and properly demonstrate that Bao Dezhang died of illness; this kind of request may, indeed, have triggered the kind of re-inquisition that we see from the local level in Zhang Enrong's case. This report quotes from many previous documents: it cites the original Autumn Review case on Bao's crime, and investigations into his death from the county as well as the provincial Surveillance Commissioner. These layers of quoted reports predictably all confirm the same information: Bao caught an illness and died.

That Bao Dezhang was sick is assured by an abundance of witnesses: two guards, the prisoner in the neighboring cell, the doctor, the coroner and Bao's son are all quoted as confirming to the county officials that Bao died of a coughing sickness. These testimonies all fall along the same lines: everyone testifies that the prisoner was ill and not mistreated. The doctor confirms that "the criminal took medicine without result and on the 16th in the afternoon died."¹⁴⁸ The coroner describes the body:

The body of Bao Dezhang has a yellow face, emaciated body, open eyes, slightly open and grasping hands, drooping belly, two feet are extended.¹⁴⁹

Two jail attendants, a neighboring prisoner, the doctor and Bao's own son are quoted in one voice:

Bao Dezhang truly caught the coughing illness and there was no maltreatment. [He died of] no other cause.¹⁵⁰

Clearly these five men did not in fact give their testimony in chorus, and did not all witness the same evidence of Bao's illness. Bao's son, for example, was likely required to sign a statement in order to fetch his father's body: it seems unlikely that a grieving son, come to the yamen to bring his father's corpse to burial, would resist signing the statement put before him by the local magistrate. The neighboring prisoner, about whom we know nothing but his name (Zhou Linyuan), most likely gave his testimony about the illness of his fellow inmate under a veiled (or not-so-veiled) threat of action (or inaction) on his own case. Without knowing anything about the prisoner in the next cell we can safely assume that the death of his neighbor gave him every reason to hasten, through whatever testimony might be requested, his own liberation from the local jail.

These assurances were a necessary part of all such investigations, and demonstrate another way that the Qing justice system valued the evidence extracted from human bodies: by representing these utterances on paper the magistrates in charge of Bao demonstrated that though he had not been punished he had received benevolent treatment. These testimonies, like those collected from witnesses in the course of any criminal case, were arguably less confirmable than the testimony given by the dead body itself, but they likewise show the high value the Qing judicial system placed on performing in text, through verifiable and systematically collected evidence, the proper treatment of prisoners by those who held them captive.

¹⁴⁸ AS 073350-2.

¹⁴⁹ AS 073350-2.

¹⁵⁰ AS 073350-2 -3.

The testimonies quoted here, though numerous, identical and necessary, were for some reason deemed insufficient performances of benevolent treatment by lower level officials. This document is ultimately a request for further investigation into Bao's death. In the absence of other information on this case, it is unclear where these official suspicions came from. To the modern observer these testimonies seem monotonous but standard, even perfect: witnesses to unintentional deaths are always asked to sign statements using the same phrase "the criminal died of illness; there was no other cause." And to quote them in one voice seems reasonable: as we saw in the local documentation of the case of Zhang Enrong, testimonies in local archives use variations on the same phraseology over and over again. But still something about this particular case aroused someone's suspicions, and more investigation was requested.

Perhaps the details of the dead's physical state prompted uncertainty: maybe the coughing illness did not usually result in a yellow face. Perhaps the officials giving the report were under investigation for some other administrative error elsewhere. Perhaps the request for more investigation was another standard intermediate step before the final *tiben* was collected, a step not always evident in either local documents or final reports. Only an official more versed than I in the context of this report could identify conclusively the reason this particular death required more attention. One fact stands out, however, as potentially troubling. Buried on the fourth page of this report, inside a recitation of Bao's original crime, lies a description of Bao's place in the Review system: "The Zhejiang criminal Bao Dezhang... was sentenced to strangulation after Case Review and has had a stay of execution *nine times*."¹⁵¹ Bao's crime (killing his wife), occurred nearly a decade before he died in jail. A quick glance at this report would not reveal how long Bao's case had been in the Review system; this fact is neither mentioned in the summary nor in the first few topic sentences.¹⁵² Perhaps Bao Dezhang's longevity itself triggered increased suspicion.

As we will see in chapter four a prisoner sitting in the Review system for such an extended period was not unheard of. Local officials privately might have rejoiced at his demise: he, and prisoners like him, required not only space and upkeep but also yearly documentation and periodic re-investigation (an issue I will take up in chapter five). Long term inmates like Bao would have been a burden on their home localities: in administrative terms the Qing justice system could use more deaths like Bao's. But perhaps the very convenience of this death triggered suspicion. In an empire broadly concerned with the demonstration of benevolence, the accidental death of any prisoner was troubling. The death

¹⁵¹ AS 073350-4, emphasis mine.

¹⁵² That Bao's repeated stays of executions are not visible at first glance illustrates two features of the Review system: first that the number of criminals waiting punishment or judgment may have been quite large quite early on, and may have been overlooked by historians. This case is relatively early, QL 11, and while we usually think of the Qing justice system as being overloaded in the period after Qianlong, rarely is the legal system under Qianlong characterized as already overburdened with criminals. Second, an ordinary criminal getting multiple stays of execution within the Review system was clearly a normal state of affairs, as it is not made an issue here or elsewhere until much later in the dynasty. I wonder, again, how much information about the way the Review system itself functioned historians have overlooked in our zeal to mine case reports for details of everyday life under the Qing.

of a prisoner whose death benefited that system might have been even more so. Perhaps Bao Dezhang's case attracted more attention from higher officials precisely because the local magistrate failed to show conclusively, using properly collected evidence, that Bao Dezhang, an inmate whose appeals were extended and punishments slow in coming, was not dispatched merely for the administrative ease of local officials.

Deaths in jail held a serious potential for performing both a failure of imperial benevolence and a failure of the proper performance of local officials. The local official, though newly unburdened with a dead prisoner who had been clogging up the system and his jail for a long time, was newly encumbered with a potential miscarriage of justice; if he made a misstep he may have passed that burden up to his superiors. All the officials involved in such a mistake were forced to walk a fine line in their reports: each demonstrating to his superiors that he had discharged his responsibility while responding to his inferiors with the proper suspicion. These dual goals, to perform benevolence and oversee judicial practice, put the mid-level officials in perhaps the most delicate position, as every report on the death of a prisoner had to demonstrate both that his underlings and the review system itself were not to blame.

Bao Dezhang's tenure in jail and the meticulous nature of reports like this one suggest that we should take seriously the notion that criminals were punished not to rid the empire of undesirable elements (a common criticism lobbed at pre-modern justice systems), but at least partially in order to demonstrate the empire (and emperor's) powerful and benevolent rule. The death of Bao Dezhang, as well as those of the countless other Review criminals who waited for years to be punished, served no purpose for the Qing. In other words: some, maybe most of these deaths were truly errors, and potentially dangerous ones not only for the officials in charge but for the empire itself. The balance between state power and benevolence required the careful alignment of many elements: official conduct, public support, proper review, righteous punishment. When a prisoner died that balance was thrown off, and had to be rectified through careful investigation and preparation of reports. Though it is not evident here in the many testimonies and descriptions of his death, it seems something in the case of Bao was not prepared properly. Officials took that oversight seriously.

Bao Dezhang's death was silent to nearly everyone outside the jail but to the officials involved it spoke loudly about the sluggishness and periodic failure of a justice system intent on the imperial review of all capital cases. That voice could potentially project itself past the walls of the jail, through the whispers of family members or officials, and as far as magistrates were concerned, it had to be silenced. And silenced it was, through paperwork. By gathering the testimony of everyone who came in contact with that prisoner, a demonstration of official power over the accidental dead replaced a potentially dangerous demonstration of official mishandling of captives. That those testimonies came from a cast of nearly anonymous characters, each more malleable than the next, was an issue only for the magistrate who gave his superiors something to be concerned about. And thus magistrates dutifully collected as much evidence as they could from the dead and the living in the hopes of burying any errors, perceived or real, in paperwork.

The preliminary reports I have cited thus far give us a glimpse into the process by which the Qing justice system tidied up the unintentionally dead. Now that I have considered the administrative processes which produced a coherent narrative of an accidental death, let's

turn to the final narrative product of all this investigating and recording, the report prepared for the Board of Punishments and for the emperor himself.

Final Narrative: the Case of Zhang Ming

In the 8th month of Qianlong 60 three men murdered an acquaintance in a dark alley and stole his wallet and shoes.¹⁵³ The details of that murder are lurid, but not particularly odd: there is a bloody knife and a headless corpse, a hapless merchant and a missing wallet. The outcome was likewise unremarkable: several criminals were sentenced to different post-Review punishments and left to sit in the county jail while their case was deliberated and made its way through the Review system. Much of the case record is given to deciding that this was murder alone, rather than murder and robbery. The criminals all give their version of the events as do a host of witnesses. To the leader of the convicted murderers, Zhang Ming, the outcome of these investigations and all of the official debate over the proper way to classify and punish his crime didn't matter much: he took ill and died in jail after he was assigned punishment but before his case was reviewed and that punishment made final.

When this ordinary prisoner died an ordinary death of illness in jail, his case was not detached from those of his co-conspirators, rather the information that Zhang Ming no longer required punishment was amended to the original case. By reducing the unintentional death of Zhang Ming in jail to one part of a coherent crime and justice narrative involving a long period of time and a large cast of characters, the final *tiben* obscures both the full details of Zhang Ming's death and the amount of investigative and administrative work that went into processing this dead inmate.¹⁵⁴ As we saw in the cases of Zhang Enrong and Bao Dezhong, any suspicion surrounding an accidental death was roused and dealt with at a lower level; this central level report does not outline those steps. Deaths in jail were investigated fully before being written up succinctly, amended to the original case file and sent on to the Board of Punishments. By grouping accidental death with the original case, the justice system left itself a bit of room for accidental deaths by illness; while the lengthy review process resulted in

¹⁵³ XKTb "jails" section, bundle 183, JQ 3/2/29.

¹⁵⁴ As the memorial about Zhang Ming and his accomplices shows, the organization of the Review system as a whole complicates the issue of accessing records about unintentional deaths via records created in the course of that review. Many cases within the Case Review system concern more than one criminal, so many *tiben* concern the case against and punishment of more than one person. This tenet of the organization of the Qing justice apparatus has been overlooked in studies that attempt to quantify the number of people punished based on the number of cases that moved through the justice system. Counting case records, as would be possible by looking at the *Xingke Shishu* (the Grand Secretariat Registry for routine memorials from the Board of Punishments), is not tantamount to counting the number of people punished or given stays of execution, as criminals were grouped by case. One gains a different quantitative view by approaching the justice system through *xingke tiben* or through the Review *huangce* as in the latter criminals are listed as individuals (but may be listed in multiple locations, complicating matters). Further research is required to approach these quantitative issues more directly.

criminals sitting together in local jails for years, it also allowed for a narrative structure within which the clever official could obscure mistakes in prisoner handling.

The best way to understand what details were more valuable in representing a death in prison as a true accident would be to compare the local investigation and mid-level reports with the final *tiben*. Though such a task would be nearly impossible for most cases,¹⁵⁵ the embedded quotes standard in Qing reporting make it very clear where the original case report has been amended to discuss Zhang Ming's death. The details of Zhang's death are grouped in the section that considers punishment for the various criminals in this case; the point of this *tiben* is not to document the death of a murderer in jail but to properly wrap up the case against a criminal and his co-conspirators within the Review system. When the Board of Punishments and the emperor picked up this *tiben* they read the details they would have read in any other murder case: descriptions of the victim's body as well as confessions by all the criminals and many witnesses to the crime, all reporting in accordance with the prescribed processing of murder cases. In other words nothing in the crime narrative of this *tiben* was set awry by the accidental death of one of the accused in a county jail.

Nothing, that is, apart from the final investigations and punishments. As Zhang Ming was already dead, he could not be punished for murder. To justify that particular miscarriage of justice, the authors seamlessly include the evidence collected when an Review criminal expired in jail. The documentary norms of Qing case record narrative and the belief in the irrefutable nature of physical evidence produce two opposing but strikingly similar descriptions of dead bodies. In the description of Zhang's death in jail by illness, the dead murderer's body is presented clinically as evidence that the administration committed no misdeed (the details of death by illness will be familiar from the case of Zhang Enrong):

“[Zhang is] 24 years old, [his corpse] faces upwards, has a yellow face, two eyes shut, mouth shut, two hands slightly grasping, stomach caved in, feet extended.”¹⁵⁶

In the narrative of the original crime, the victim's body is similarly described in terms of its position and state:

the body was on the right side facing the North-West, head on the right side of body, separated from the body by three *cun*, shoulder unharmed, wearing a ripped blue cotton jacket, a ripped blue shirt, bare feet, on the right side was one pair of slippers, under the spine was a white shirt with blood traces on the top.¹⁵⁷

Thus, with a coroner's inspection and an official's pen, Zhang Ming was reduced, like his victim, to a dead body. Taken as a whole, this memorial makes a case against Zhang Ming and his co-conspirators using a description of a corpse, a medical professional's report and the testimony of witnesses. That case is followed by a coroner's report, a description of a corpse, and the testimony of witnesses, this time confirming that Zhang Ming died of illness and making a case not for the righteous punishment of a murderer, but that an accidental death was not a failure of the fundamentally benevolent judicial system.

¹⁵⁵ Of course it might be possible in theory to find copies of the original and amended memorials, it seems to me that might only happen for ordinary cases with the kind of grand archival coincidence one learns not to plan for but secretly yearns to experience.

¹⁵⁶ XKTb “jails” section, bundle 183, JQ 3/2/29.

¹⁵⁷ XKTb “jails” section, bundle 183, JQ 3/2/29.

The standards of Qing crime narrative allowed officials to incorporate the evidence of an unintentional outcome (or less generously: an administrative error) into the case record just as they would the evidence of a murder. To lay blame at the feet of the officials in charge at this point would take a more careful eye than it did at lower levels: the parallel structure and juxtaposition of the murdered and murderer obscure any mistreatment that may have led to Zhang Ming's illness and death within the larger crime narrative. Shifting any potential blame away from the officials not only benefits the individuals in charge of the dead criminal but also represents as capable the entire system of review that kept inmates captive for long periods. In this way the narrative form of the *tiben* itself represents the Review system as a benevolent enterprise rather than an overloaded or overly slow system of review.

Ultimately, reports like this one remind us that all deaths under the Qing justice system can be rewritten for inclusion in the greater narrative of a benevolent empire. This goal of the *tiben* form might be obscured if we did not know the effort that went into producing and documenting evidence about accidental death. And this belief, that accidental death can be written such that it is not a failure of the judicial system, left no room for questioning a cumbersome, lengthy and potentially lethal system of repeated Case Review.

This memorial, and any *tiben* that includes both a crime and a criminal dead before punishment, right two wrongs: first the crime itself and second the failure of the empire to properly righteously and benevolently punish the criminal who committed that crime. Deaths in jail robbed the empire and its functionaries of many things: the opportunity to demonstrate imperial power, the opportunity to treat all people according to their status, the opportunity to right a social ill, the opportunity for the emperor to demonstrate his great benevolence. By investigating, documenting and ultimately rewriting that death, the Qing normalized it. In this final narrative we see the outcome of the work that lower level officials put in to investigating ordinary deaths: here we see an empire balancing its power and benevolence, even in the face of a paradox of a system that requires prisoners to wait in jail. Telling the story of an error properly restores the justice system's benevolence even when that story was robbed of a proper ending.

Men (and women) who died in jail may have seemed to just disappear, but a careful look at both local and central case records reveals that every one of those disappearances required work on the part of many officials at multiple levels. The investigation, documentation and ultimately narration of these deaths allowed death in jail to be a disappearing act rather than the operative performance of a fundamental flaw in the Qing system of review and justice. The accidental deaths of unimportant criminals were not naturally silent; they were kept quiet through standardized responses, intense administration and clever writing.

Conclusion

Though it is outside the scope of the present project to estimate, the opportunities for accidental death may have expanded over the years.¹⁵⁸ The population increase over the Qing

¹⁵⁸ As criminals were held in local jails, we do not have hard numbers on jail populations, just as we do not have hard numbers on deaths in jail. It is my impression from the local archive I

may have naturally increased the population in jails.¹⁵⁹ As the empire wore on, the review system became more laden with prisoners, prompting several rule changes to attempt to combat the increase in criminal population; I discuss one local manifestation of such a rule change in the following chapter.¹⁶⁰ Different administrative styles of different emperors may have also contributed to more or less efficient processing of review cases.¹⁶¹ All of these demographic and administrative factors contributed to the (unknown, but I believe significant) number of criminals sitting in jail waiting to be executed or die trying.

consulted for this study that a few criminals died in jail for every reporting period, and in a reasonable proportion to the number of criminals held; in other words, I believe that any criminal within the Case Review system had a similar chance of dying in prison as he had of having his case seen through to exoneration, commutation or punishment. In order to make a better guess we would have to either have access to a number of local jail rolls for a number of years or extrapolate by comparing the cases assigned capital punishment with those commuted or exonerated and those executed. This seems unreliable, as with either methodology there would be overlap meaning the criminals held from year to year might be miscounted. Lists such as the ones I have cited in this chapter give us an idea of how many inmates any locality had at any one time, but they are not consistently available.

¹⁵⁹ Kuhn makes a related point as he describes the economic and population factors contributing to the soul stealing epidemic. He cites the population doubling in the eighteenth century, and suggests that a 'rootless' population may have been a new and troubling phenomenon contributing to soul stealing fears. Kuhn, though, hedges this assessment: "However clear the facts... the *connection* between them is generally neither provable nor disprovable" (Kuhn, *Soulstealers* 48). We know that the general population increased: we can assume that the criminal population also increased over this period, however the documentation for the beginning of the eighteenth century is significantly less available than that for the later periods.

¹⁶⁰ And those rule changes may have worked: Telford, et. al. compare total criminal cases by province and type of crime in 1779 and 1890, showing a significant reduction in the number of cases. According to Telford, the total number of cases for 1779 was 3,078 while the total for 1890 was 385. This number reflects only the number of cases processed, however, not the number of criminals waiting for punishment. Additionally, by 1890 the rules for memorializing on capital cases had changed significantly, so a better data point for comparison might be the mid-nineteenth century. My own survey of similar materials (I consulted numbers for 11 years for a single central province (Zhili)) shows the numbers of cases processed holding nearly steady from QL 54 to DG 28 (GSU 1357770). I remain convinced, however, that as more and more cases were delayed from year to year the jailed population must have risen, even if the number of cases recorded dropped. (Telford et al, "Qing Archival Materials" 100).

¹⁶¹ McKnight's study of the uses of amnesty broaches this subject; in chapter five I discuss his work in more detail. (Brian E. McKnight, *The Quality of Mercy: Amnesties and Traditional Chinese Justice* (Honolulu: University Press of Hawaii, 1981)).

But, as even the luckiest criminal had ample opportunity to get sick and die,¹⁶² clearly an important side effect of the bureaucratically heavy Case Review system was the opportunity for criminals to die while waiting for their final judgment. One might argue that direct execution was the more humane death penalty, and it was certainly the bureaucratically easier one: in terms of both administrative man hours and microbes quick dispatch benefited everyone.

Thus, though being imprisoned in pre-modern jails was not envisioned as punishment, a lengthy stay in Qing holding jails was not unexpected. The seasonality of the review system as well its redundancy required the captivity of many criminals for long periods of time. When those people died in jail, we can see a systemic glitch in this method of case review: criminals died on the way to punishment. Here is a structural paradox in the Case Review system: to review all execution cases criminals were forced to await the slow wheels of bureaucracy, but the physical nature of human bodies and disease make that waiting untenable for an arguably large percentage of those captives. Put differently: the multi-tiered legal review system demonstrated the righteousness of the death penalty while at the same time causing the accidental death of captives within it.

As we have seen in these case studies, the accidental death of a criminal awaiting an intentional death was a problem, for local officials, for mid-level officials, and for the empire as a whole (to say nothing of the tormented souls who suffered from illness while awaiting judgment). From a distance, and influenced by the literature on pre-modern punishment which dismisses pre-modern jails and justice as inefficient, irrational pools of contagion, we might assume that as the Case Review system became overloaded, officials secretly rejoiced when undesirables expired more efficiently than the Review system could dispatch them. The cases I have investigated here contradict that assumption. Rather, we see that imperial bureaucrats, from local to central authorities, were quite concerned with these accidental deaths. The Qing made a significant investment in performing benevolence in the face of this systemic flaw; everyone, from the jailer to the Board of Punishments, worked to incorporate this failure of punishment into an imperial narrative of justice. Qing bureaucrats may not have acknowledged the accidental death of captives as the systemic problem it appears to be now, but they certainly took those deaths seriously.

I began my discussion of these exemplary cases by asserting that we can see the goals and values of the Qing judicial system as it attempted to clean up its errors. In short, by valuing various kinds of evidence over others, the Qing justice apparatus and the men who worked within it quietly continued justifying as benevolent a complex system of review and punishment in the face of the repeated accidental death of criminals. Clearly these practices worked to some extent: critics of the judicial system in general and Case Review in particular

¹⁶² If a criminal sentenced to delayed execution was apprehended and investigated in the spring, he still had to be fully investigated, transferred at least once, and wouldn't be punished before the winter. During that half a year in jail even the most hearty of criminals could get sick and expire in the summer heat. Further, I don't believe this best case scenario to be particularly plausible, even in the most efficient of yamens: any prisoner sentenced to execution with delay had to be investigated fully, transferred to the county seat for another investigation, transferred back and then had the case reported in the autumn review system.

were heard only at the very end of the dynasty,¹⁶³ and even today deaths in jail have largely been attributed to conditions in pre-modern holding jails and then dismissed.¹⁶⁴ While Qing jails could not attempt the kind of reform of individuals at which twentieth century punishment aimed, they could still fit into the narrative of a benevolent empire.¹⁶⁵ Dismissing those who died at the hands of mistreatment and illness as the simple errors of an unenlightened age ignores not only the administrative work I have documented here, not only the complex system of representation that followed each accidental death, not only the possibility such an error left for questioning the benevolence justification for Qing rule, but also elides the aborted potential of those criminals' punishments or release. If we dismiss death in jail we, too, may have been taken in by the clever, manipulative and performative narrative structures of Qing criminal reporting.

Those broken bits of humanity who died accidentally in Qing jails may have constituted a large part of those who died at the hands of the Qing bureaucracy, even if they were not acknowledged as such at the time. Though they died they were never punished, and this is the final, simple point I would like make about the death in prison of ordinary criminals: while we know that punishment is not always death, less obviously, death is not always punishment.

Were death punishment, upon the accidental death of a murderer in jail like the ones I have introduced here very little further administrative action would need to be taken. Bodies would have to be disposed of, cells cleaned, but no corpses would need to be inspected, no witnesses interrogated, no mid-level officials would have requested re-investigations to assure the proper actions of their subordinates. If death were punishment, when an inmate died,

¹⁶³ It is these fin-de-siècle critics, from China and abroad, that first drew attention to the number of criminals held in jail and the number of criminals who died on the way to punishment, but we should be careful not to assume that their observations reflect the situation throughout the Qing. For example, the reformer Zhang Zhidong asserted in a memorial that jails “are like hell on earth. Foreigners scoff at them and compare them with the ways of barbarians” (translated in Meijer, *Introduction of Modern Criminal Law* 131).

¹⁶⁴ This assertion, that pre-modern jails were simply not good places for human life, is generally found in the literature on pre-modern holding facilities. Often this assertion is found in the background of the discussion of the twentieth century modernization of jails worldwide (rather than by scholars who have directly engaged those pre-modern justice systems). A representative example for the Chinese case is Dikötter, *Crime, Punishment and the Prison*.

¹⁶⁵ Janet Chen and others have argued the twentieth century saw new and changing definitions of crime in the service of new and changing national priorities. While I do not quibble with the idea that a changing definition of crime reflects changing social values, I do see continuities between practices of punishment usually defined as entirely different from each other. Qing jails and punishment were not intended to reform individuals, certainly, but they were part of a system of administration that carefully demonstrated its righteousness. I wonder if the continuities, especially as perceived by regular people, between this pre-twentieth century system of justice and its decedents might be more interesting than the contrasts: rather than looking at how Western ideals were imported to China we might ask to what extent did pre-Western legal apparatus persist. (Janet Chen, *Guilty of Indigence: The Urban Poor in China 1900-1954* (Princeton: Princeton University Press, 2012)).

justice (as simply defined by an autocratic central authority) would have been served. In terms of bureaucratic procedure, narrative and beliefs, death and execution could not be more different. The lack of details about particular ordinary executions (dates and locations, for example) in local and central archives is paralleled by a bounty of documentation of those bodies that succumbed to disease in jail. The meticulous documentation of the time, date and circumstances surrounding the deaths of ordinary criminals in jail when compared with the surprisingly silent deaths of those executed under this supposedly feudal regime is striking. Qing archives are lousy with details about corpses, just not about punished ones.

The historian faces a volume discrepancy opposite to the one nineteenth century photography of Qing executions and common beliefs about pre-modern China's criminal justice system would lead her to expect: within official archives the masses who were executed in the marketplace are quiet while those who died in jail are loud. Whatever statement a curious public received from Qing executions, be it one of imperial power or benevolence, has not stood the test of time. But the response to the failure to make that statement has survived, and that response shows that Qing authorities were concerned about that abortion of justice. The execution of untold numbers of ordinary criminals under the Qing was not merely an easy way to dispose of or keep in check an excess number of rogue males (though it may have functioned to do just that), and the system of Case Review was likewise not an easy way to silence critics of the empire.

Death in jail, while unfortunate, was neither intentional nor overlooked, neither convenient nor simple. It was a system-wide problem that never became one. It was silent, but much work was done to keep it so. If we believe that the death penalty was a spectacular performance of the empire's power over non-normative subjects, that display of power depended on the narration as benevolent of the stories of those who died before they could make it to that stage. If we believe, as Jonathan Ocko and others have asserted, that justice was of cosmic importance,¹⁶⁶ the balance of not only the empire but of the entire cosmos depended on that continued silence. When properly written, the sound generated by every death in jail could be kept quiet. When poorly handled, that sound held very dangerous potential indeed.

¹⁶⁶ Jonathan Ocko, "I'll Take it All the Way to the Capital," *Journal of Asian Studies* 47 no 2 (May 1988) 291: "Justice in Chinese society was literally of cosmic importance. Traditional Chinese thinking considered man and nature organic elements of a seamless cosmic web. Injustice of any kind did not simply rend the web in one place but placed tension on the entire structure. To restore equilibrium, the injustice had to be perfectly redressed, no more, no less."

Chapter 4. The Everyday Performance and Expense of Empire: Routine Prisoner Transfer

In the nineteenth year of the Daoguang reign three captive grave-robbers were moved from their local jail to a jail at a superior office, where they were to be questioned as officials prepared their case to be examined by the Board of Punishments in the capital. Neither the questioning nor the journey that made it possible were particularly special: most criminals condemned to execution after Autumn Case Review had to be moved so that the proper officials could interrogate and inspect them. Witnesses to this journey would not have found it notable, either: just by looking at the cart in which they rode, or at the official escort, or at the clothes in which the grave robbers were dressed any seasoned traveler sharing the road would have instantly known that that cart contained criminals, most likely those sentenced to death. To their fellow travelers and to the officials in charge of these grave robbers, this unremarkable experience was nothing new or notable: moving prisoners were just part of the mobile landscape of imperial China. The only actors in this scene who might have found it novel were the criminals themselves. Maybe, as they rattled between one jail and another, they recalled fondly playing the easier role of curious on-looker. Or maybe this journey presaged their final trip through the streets, a journey to a destination even less appealing than a musty jail.

This quotidian trip, along with the uncountable others like it, suggests an area of the administration of criminal law tangential but essential to the study of capital punishment: the transport of captives across space for the purpose of investigating, trying and punishing. Legal historians of late imperial China have tended to treat prisoner transfer cursorily. Though Western scholars of legal history acknowledge the unique investigation and review techniques of Qing administration, they rarely make explicit the way that prisoners were moved across the landscape in the process of creating the legal documents upon which most research into criminal law is based. This oversight is not insignificant: the movement of captives was essential and particular to the Qing's system of Case Review, dependent as that system was upon the redundant interrogation of criminals and witnesses. If we are to take seriously the contentions that legal history gives us important insights into social history and that the documents produced by the justice system must be understood in the contexts in which they were created, we must not overlook these criminal transfers. Put simply, historians of the law should not focus on criminals' destinations at the expense of their journeys.

The movement of captive people informs the study of law in the Qing for both mundane and more theoretical reasons. The Qing transferred criminals between offices to question them. In this sense, these men and women were living documents, producers of incontrovertible evidence not mediated by the suspicious motivations of local officials. The Qing's unique review system depended on this labor-intensive practice, so much so that the bureaucracy worked to preserve it through changing social and economic situations. Less concretely, the movement of prisoners matters because it performed imperial power in the spaces between village and city and between judgment and punishment. A focus on prisoner transfer can redirect our attention from the less common spectacles of imperial power and toward the quieter, but no less apparent, ways that the Qing demonstrated its reach into the lives of regular people.

My goal in this chapter is dual: I lay out the realities and practical considerations of moving criminals while arguing that this practice did important symbolic work, work that we should not ignore. The practical considerations of routinely moving criminals were multitudinous, requiring multiple legal guidelines and an immense amount of manpower, but still the practice itself was not suspended, leading me to conclude that prisoner transfer continued for much of the Qing to be an essential part of the Case Review system. We also see the ways that a pre-carceral empire's ability to incarcerate was on stage daily. But more than just the demonstration of the power of the state over captive, non-normative bodies, transferring criminals within the Review system displayed the process of justice, it showed the state's proper and benevolent treatment of people who had strayed from its prescribed path. Thus, the performance of imperial power was not a simple demonstration of the empire's total control (as it may have been in an execution), but rather a complicated show illustrating the complexity of the Qing's power over people (and sometimes, as we will see, the lack of that power) through standard, even benevolent judicial procedure.

To meet both parts of this goal I begin by following the journey of the grave robbers cited above, a journey documented at the local level. Then I consider how prisoner transfer was intended to work, as described in a few foundational and instructional documents. After this brief overview I move on to some more stories taken from local and central legal records, stories which demonstrate the ways that the practice of prisoner transfer differed from the ideal. Finally I'll discuss a telling moment in the Daoguang period when transfer protocol was refined. My aim is to paint a more complex picture of how the Qing invested in the daily performance of imperial power in order to understand why that investment might have been worthwhile.

The Grave Robbers Wei

Wei Yongqi and his brothers Wei Yonghe and Wei Yongnian were arrested in Daoguang 18 for the theft of the clothes off a corpse.¹⁶⁷ All three brothers were to be punished with delay, and so their case entered the Autumn Review system. As new cases in the Autumn Review system at least two of them were transferred from Baodi county in Shuntian prefecture to the provincial capital for re-investigation. Thanks to the many short handwritten documents collected in the Shuntian prefecture archive, the documentation of this transfer is extensive, if a bit opaque and disorganized. Documents carried between counties tell us that these prisoners were considered dangerous and as such were shackled¹⁶⁸ and wore the red pants that identified them on their journey as high-risk criminals.¹⁶⁹ We also know that the prisoners were fed two meals and were taken in one cart,¹⁷⁰ and that one of them was

¹⁶⁷ This story is taken from the legal records section of the archive of Shuntian prefecture, held in China's number one historical archive, here abbreviated STF. A fourth brother was arrested as well, though it seems not at the same time as the initial three. STF 28-1-60-34 (undated, presumably DG 19).

¹⁶⁸ STF 28-1-55-102 (DG 19/3/26).

¹⁶⁹ STF 28-1-55-106 (dated "the 11th month, 7th day").

¹⁷⁰ STF 28-1-55-101 (DG 19/3/26), 28-1-55-102 (DG 19/3/26).

missing fingers.¹⁷¹ We know that the journey took more than one day, as the prisoners sheltered overnight in the Xianghe county jail.¹⁷² We can extrapolate from the (few) dates on lists of prisoners that the round-trip to the capital took nearly a month (from the middle of the third month in Daoguang 19¹⁷³ to the middle of the fourth month of Daoguang 19¹⁷⁴). The lower level officials such as jailors and guards are listed on the receipts of transfer, as are the officials in charge of the punishment office at the county level.¹⁷⁵

If we could locate the case record that eventually presented the details of this case to the officials in the capital, it is doubtful that all of these journeys would be spelled out.¹⁷⁶ More likely, that more formal record would include a description of the crime, in the voices of both the local and provincial officials. That description would be written in such a way that the Wei brothers' punishments would be a forgone conclusion; narratives about investigations generally leave no holes. The case record likely also included confessions by the criminals, in informal language, that confirmed the official narrative. Some of the details about the criminals' physical bodies might be quoted, to identify them, and the names of some of the lower level officials might be recorded in the description of the way that confessions were obtained. But, if this case was simple and reported according to protocol, most of the details about the time these criminals spent in custody would not be evident.

Beyond the people listed by name on these local documents (i.e. the officials, administrative assistants and criminals in question), many other people would have been affected by this routine transfer of prisoners within the Autumn Review system. The people who came in contact with these moving prisoners who are not listed even on local documents are myriad: their fellow prisoners at the county and capital jails, the other minor officials working at the jails, the personnel required to move the case up to the governor general, even the governors general themselves. Besides learning from this transfer paperwork the bureaucratic details of transfer (shackles, meals, cost, etc.) we also catch a glimpse of the official networks that such a movement of captive bodies might have generated and solidified. Perhaps more importantly, we can begin to guess at the many undocumented networks, both official and criminal, that might have been associated with the transfer of prisoners: on this month-long journey these criminals might have interacted with many other inmates, innumerable officials and their underlings and even people traveling the same roads. In other

¹⁷¹ STF 28-1-55-109 (DG ?/4/14).

¹⁷² STF 28-1-55-104 (DG 19/3/13).

¹⁷³ STF 28-1-55-103 (dated only 3/13).

¹⁷⁴ STF 28-1-55-108 (DG 19/11), 28-1-55-113 (DG 29/4/21).

¹⁷⁵ STF 28-1-55-107 (DG 19/11/c7).

¹⁷⁶ I attempted to locate the *xingke tiben* for this case in the *qiushen* section of the Board of Punishments *tiben* archive, microfilmed by the number one archive and held at the Genealogical Society of Utah. Though these archives are chronologically organized and seemingly represent a complete copy of the archives at the number one (which were not open for research at my last visit), I could not find these names either on the registers of criminals or within the case files. I was not surprised: though it would be illuminating to be able to compare local documents with the case record they produced, I do not think that methodology is particularly practical for the Qing, primarily because imperial archives did not fare well in the twentieth century.

words, this routine transfer was not merely an essential step in the production of the case records we use to write legal history; rather this kind of transfer may have been the genesis of important, easily overlooked connections in the social history of punishment.

These grave robbers were guilty of a crime of symbolic significance, rather than a crime that directly threatened public order. The Qing code explicitly defines punishments for those who uncover graves (“Everyone who digs up (*another’s*) burial mound or grave... If he has opened the exterior and interior coffins and the corpse appears, he will be strangled (*with delay*).”¹⁷⁷), presumably because in most Chinese belief systems a peaceful afterlife required an appropriately treated corpse; disturbing a grave might seriously impact someone’s ancestor. When grave robbers were executed, their crime would be made clear to the crowd of on-lookers both through written placards and, presumably, word of mouth. This punishment certainly would have demonstrated to on-lookers that the empire did not tolerate grave robbing. But when we consider the way that they were moved between administrative units under guard wearing the markers of convicted criminals, we can see that the bodies of the Wei brothers were used to demonstrate imperial power long before those bodies were killed. These more frequent demonstrations of the power of the imperial judicial process may have had a more subtle, even disciplinary effect on the regular people sharing the road with convicts and jailers. Unlike crowds who intentionally awoke early to see a spectacular execution in the marketplace, fellow travelers experienced prisoner transfer as a quotidian, unremarkable demonstration of judicial process; the unconscious effect of this display of administrative ideals daily underscored imperial power.

If we multiply the routine transfers of the Wei brothers by the number of serious crimes committed in every county in every year we also can start to get a sense of the amount of time that local officials and their employees put into the movement of prisoners. By the fifth day after a crime the local magistrate’s preliminary investigation was supposed to be finished, but the criminal’s journey had just started. After the initial investigation associated with entering the Case Review system the four Wei brothers suffered different fates: according to prison records Wei Yonghe had entered the Review system at least eleven times¹⁷⁸ when he fell ill in prison in Daoguang 29, meaning that he had waited for a verdict for at least twelve years after his initial arrest.¹⁷⁹ Only Wei Yongqi seems to have been executed rather rapidly, after which his body was put in storage to await retrieval by a relative in Daoguang 19.¹⁸⁰ Wei Yongnian’s fate is unclear, but like his brother he may also have lingered long enough in the Qing justice system to be transferred subsequent times. All of these transfers are only evidenced by local prison records; I doubt the routine memorials about this case mention them explicitly.

Though we cannot trace the outcome of all of the Wei brothers’ journeys through the Case Review system, we have no reason to believe their case to be atypical. These criminals’ multiple transfers over many years demonstrate first of all the financial burden, geographic complexities and official labor that went in to the creation of an Autumn Review case. Using human beings as data in criminal cases, as living documents that needed to be multiply

¹⁷⁷ *The Great Qing Code*, Jones trans. 260.

¹⁷⁸ STF 28-1-59-111 (DG ?/4/19).

¹⁷⁹ STF 28-1-59-113 (DG 29/4/21).

¹⁸⁰ STF 28-1-59-108 (DG 19/11).

investigated was an administrative burden; the Qing invested a great deal of resources in the belief that living bodies produced evidence essential to the proper execution of justice. Before considering more specific stories that outline this investment, it is instructive to consider the way that the routine transfer of criminals fit into the larger Review system.

Transfer Procedure

In order to better understand the complicated and potentially problematic practice of routinely transferring criminals for review, here I summarize how those transfers worked ideally. I am basing this outline on sources which assume and reinforce a vision of Qing administration as fixed throughout both time and space; as I will discuss in later sections the practice of prisoner transfer did not always follow this ideal pattern and the legal requirements for transfer varied with time and place. Still, as the procedure itself is rarely acknowledged, it seems important to lay out the broad information we have about the prescribed practice.

Routine Transfer: a Broad Outline

Any case that was reviewed by the provincial governors-general or governors required the transfer of prisoners to provincial capitals.¹⁸¹ As only civil and minor criminal cases were handled entirely at the local yamen, these cases were numerous. Thus, at least on paper, criminals who were transferred ranged from thieves to murderers, adulterers to revolutionaries. Every criminal case began at the local magistrate's office, which was responsible for investigating all manner of crimes in a timely fashion. This investigation was the responsibility of the magistrate himself,¹⁸² who, with the assistance of secretaries, inspected crime scenes, interrogated criminals and collected physical evidence. Once an investigation was complete, the magistrate's office forwarded relevant paperwork and case summaries to higher officials.

Upon receiving a case from a local magistrate, higher officials conducted their own investigations. The criminal himself was as central to this investigation as he was to the magistrate's initial report, and so all prisoners held for serious offenses were transferred, along with their paperwork, to the governors-general or governor's office for a secondary investigation. Sun Jiahong describes that part of the process: "Case notes and reference opinions, together with the convicted criminal, [went to] the provincial Judicial Commissioner where the convicted criminal was held for interrogation at the jail in the capital of the

¹⁸¹ The broader parts of this outline are based on Ch'ü T'ung-tsu's *Local Government in China under the Ch'ing*. Ch'ü's description is based on research done in one particular locale, and depicts the Qing justice system as a static entity rather than an evolving system of precedents enacted over a large and diverse empire. Still, Ch'ü's work remains the standard English language reference point for issues of local governance.

¹⁸² "The magistrate's duty was done as soon as he had conducted the trial and secured a confession. All the documents relating to the case were then handed over to the private secretary, so that he could prepare the report." Ch'ü T'ung-tsu, *Local Government in China under the Ch'ing* (Cambridge: Harvard University Press, 1962) 126.

province.”¹⁸³ Once prisoners were interrogated a second time, the provincial authorities “reviewed the whole case, and if they found the proof unconvincing, or that the case had some oversight, or that the crime was undeserving, they would send a rejection to the [lower officials who would have to] investigate and report again.”¹⁸⁴ If the case was deemed appropriate, the case was sent on to the higher officials; either way criminals were usually sent back to the local yamen where they awaited the order to carry out their punishment. This process could have taken days or decades, depending on any number of factors at many levels of government. During this time prisoners could have lingered at a local jail or a provincial capital jail, depending on what level was responsible for that part of the investigation.

There were exceptions to these transfer rules. In investigation as in the rest of Qing criminal law female criminals required some special treatment. In Huang Liuhong’s magistrate’s handbook he makes clear the danger that female detainees, both criminals and witnesses, face. He warns that magistrates must be immensely careful not to allow anyone to take advantage of female criminals, and suggests several ways to protect these women from “male prisoners, wardens, and turnkeys.”¹⁸⁵ Women who have committed crimes of anything less than murder should be housed outside the jail, either with their families or with “an elderly and honest matron.”¹⁸⁶ This ideal extended to transfer as well: as magistrates were expected to avoid allowing access to female prisoners they should avoid transferring them at all costs and when they did their lodgings were different than their male counterparts.

Prisoners sentenced to immediate execution might have only traveled to the provincial capital and back one time. But those sentenced to delayed execution, i.e. punishment after the Autumn Reviews, would have made the round trip journey to the capital twice, as all delayed criminals were “retried by all these provincial authorities during the time of the ‘autumn assize’ and reported to the board” of punishments.¹⁸⁷ Though we have no way of knowing precisely the relative number of criminals sentenced to immediate and delayed execution,¹⁸⁸ we can be sure that most cases which warranted the death penalty were not finalized until the prisoner had been transferred to the provincial capital once at the very least.

There were exceptions to this second round of transfers as well. In addition to the general concern with the location and accessibility of vulnerable female criminals, captives too old or ill could be exempt from traveling to the higher court. For these cases and those in locations deemed too remote, “criminals were retried by intendants who were responsible for

¹⁸³ Sun Jiahong *Qingdai de Sixing Jianhou* (Beijing: Shehui kexue Wenxian Chubanshe, 2007) 93.

¹⁸⁴ Sun Jiahong, *Sixing Jianhou* 93.

¹⁸⁵ Huang Liu-hung, *A Complete Book* 308.

¹⁸⁶ Huang Liu-hung, *A Complete Book* 308.

¹⁸⁷ Ch’ü *Local Government* 117.

¹⁸⁸ Qing archives have holes at all levels, but the documentation of the Case Review system greatly outweighs evidence of direct execution actually being carried out. Though this differential in existing documentation could be attributed to the fact that local archives fared worse in the twentieth century than central archives, it is my guess that direct execution for everyday crimes was assigned more rarely. Put differently, I believe that in non-crisis times more criminals were assigned execution with delay than direct execution.

reporting to the higher provincial authorities.”¹⁸⁹ Exemptions due to geography were not only reserved for the most remote or least populated parts of the empire: though we would expect there to be places in Sichuan where traveling to the provincial capital was impossible, Sun Jiahong lists localities (*xian*, *zhou* and *fu*) within 14 provinces where criminals were exempt from such travel. Included in this list are counties in relatively centralized and populated provinces such as Anhui. In other words, geographical exemptions were granted according to the distance between the locality and the provincial capital, rather than according to the size and geographical features of the province itself or to the remoteness of the province to the center of imperial power.¹⁹⁰

Routine Transfer in Qing documents

For cases which proceeded smoothly, the procedure summarized above is barely visible both in the legal texts to which scholars usually turn to clarify Qing law and in the central documentation of any one particular case. The Qing code is relatively silent on criminal transfer, as it is on many matters of routine administration. Clauses in the laws relating to the Board of Punishments take the practice for granted, such as Article 411, “The Degrees of Competence of [Officials] Having Jurisdiction for Executing [Sentences] of Prisoners,” which states,

If, (*while the case is being jointly reviewed* [for the Autumn or Court Assize], *the offender (himself)* makes statements contrary (*to his original statements...the officials who are reviewing the record*) must immediately (*again*) conduct an interrogation.¹⁹¹

Clearly people were moved between offices for the purpose of interrogation in the course of review, but the canonical legal texts did not distinctly outline this practice. Rather, prisoner transfer, like other procedures for which lower level officials were responsible, did not belong in formal documents. If they needed clarification of the procedure, magistrates would have turned to common knowledge and handbooks, rather than legal texts.¹⁹² From the perspective of the central bureaucracy, offenders, like the paperwork that documented the original investigation, were assumed to be present for case review.

¹⁸⁹ Ch’ü 273 n10.

¹⁹⁰ Additionally, the rule requiring that the Board of Punishments review all execution orders before punishment was carried out was altered as a response to the rebellions of the nineteenth century. In the final decades of the Qing in certain situations local magistrates were allowed to first execute criminals and then memorialize the emperor, according to the *jiu difang fa* rule. For more on this rule, see Sun, *Sixing Jianhou*; Wang Ruicheng, “Jiu difang fa yu qingdai xingshi shenpai zhidu” (*Jindai Shi Yanjiu* no. 2 2005): 212 – 244; Li Guilian, “Wanqing ‘jiu difang fa kao,’” *Zhongnan Zhengfa Xueyuan Xuebao* no. 1 (1994).

¹⁹¹ *The Great Qing Code*, Jones trans, 393.

¹⁹² That common knowledge may have trickled down into the twenty-first century: the first clear description I got of the way prisoners moved in the Qing was from a graduate student at the Qingshi suo at Renmin Daxue, who very patiently described how and where criminals moved in the process of case review and was somewhat amused by my befuddlement (“they really moved *every single* criminal to the provincial capital?!” “Of course!”).

The lack of discussion of the transfer of prisoners for interrogation in the code (and other canonical legal texts)¹⁹³ might give an impression that the movement of criminals was rarely a problem. The code and statutes are rather specific when it comes to other potential issues with the application of justice, such as the bribing of officials or the escape of prisoners from jail, but we could take the code's silence to suggest that prisoner transfer was a practice within Qing legal administration that was rarely used inappropriately. As we will see, local documents do not confirm this impression; at least in the later days of the Qing and arguably quite earlier, moving prisoners around represented both an administrative difficulty and an opportunity for criminals to escape.

For practices like the routine transfer of criminals that the more formal legal texts do not address explicitly, we often turn to magistrates' handbooks; indeed that is where magistrates themselves could have turned when assuming a new office. But even those are not always explicit about the transfer of prisoners. Huang, the magistrate who wrote *Fuhui Quanshu* (*A Complete Book of Happiness and Benevolence*), originally published in the Kangxi reign and republished through the nineteenth century, also seems to have taken knowledge about routine transfer for granted, describing the process almost accidentally: "the magistrate performs the autopsy, prepares the official confessions, drafts the summary of depositions, recommends penalties according to the provisions of the statutes, and transfers the case, together with the criminals, to the superior yamen for further trial."¹⁹⁴ Magistrates were responsible for moving both human beings and documents; Huang made very little distinction between the living and written parts of a criminal case file.

In many cases the prisoner himself traveled with his file to the provincial capital. Those cases sentenced to delayed execution went on to be reviewed again by higher authorities, but only the paper file made that last journey. Records for the Autumn Review were based on both the initial investigation done by the local magistrate (a formal report based on the magistrate's investigation of physical evidence and criminal interrogation), and the subsequent investigation carried out by the governors and governors-general (also a formal report based on the local magistrate's initial report and the secondary investigation and interrogation by the officials at the superior yamen). Thus, though they do not state explicitly the multiple transfers that went into their production, each final Case Review record represented multiple interrogations and investigations, each one based on the information furnished by the previous official and a new journey for an imprisoned criminal.

Review records, like all documents in the larger *xingke tiben* category, are necessarily tidy as they were destined for the emperor's desk. As we mine these documents for all kinds of data, we must remember that they are secondary sources based on a rather un-tidy, paper- and labor-intensive redundant legal process at multiple levels. These case records are at the heart of many English language studies of Qing legal and socio-legal history, and the veracity of these case histories themselves has often been discussed. But perhaps we have overlooked previously the extent to which these are documents with multiple authors are based on

¹⁹³ I believe the *Shangyu Dang'an*, the chronologically organized archive of imperial edicts, holds more documentation of corrections to the practice of prisoner transfer. As more of these imperial compendia are digitized it will become easier to conduct more comprehensive research on thematic subject matter.

¹⁹⁴ Huang, *A Complete Book* 327.

redundant investigations each requiring criminals transferred across space between jails. Each neat paragraph of each centrally produced Board of Punishments document masks connections across the Qing judicial landscape between officials as well as captive journeys across the Qing physical landscape for prisoners themselves. The ideal process of prisoner transfer serves as a reminder that we can not understate the amount of administrative labor that went into moving cases through the Qing judicial system.

In summary, the process of transfer outlined above was central to the criminal justice system, but is not particularly well-described in any single source, even in contemporary texts and documents. English language scholars who have based their research into legal practice on case histories have tended to follow these documents when it comes to this routine practice, only tangentially mentioning the process of prisoner transfer in the Qing.¹⁹⁵ But

¹⁹⁵ As I discussed in chapter 1, American and European scholars of legal history have reconsidered their characterization of the Qing justice system several times in the last few decades. Recent scholars shifted their focus from the formal, centralized system of justice to consider the way informal and local processes contributed to, indeed were central to, the greater legal system. Though this nexus of social and legal history now boasts many titles, I believe that a focus on prisoner transfer might further contribute to our understanding of the practice of punishment at the local level as well as to our comprehension of the documents on which these historical works are based.

Joanna Waley-Cohen's monograph on banishment to Xinjiang is the only work that I have found by a western scholar that makes explicit the importance of the transfer of prisoners to the criminal justice process. Waley-Cohen's extensive investigation into the punishment of exile outlines the process of banishment from arrest and trial to exile and eventual repatriation. As she narrates the movement of criminals from inner Qing China to the outer reaches of the empire she illustrates the "journey into exile" with discussions of specific criminals and officials in order to demonstrate the mid-Qing practice of banishment. Waley-Cohen points out that transporting criminals to Xinjiang for exile had different requirements than the more mundane transfer of criminals within the Case Review system. "Moving criminals across China was not a novel undertaking for the Qing government in the mid-eighteenth century. However, the unprecedented use of exiles as tools in the colonization of Xinjiang meant that their transfer involved special requirements" (Joanna Waley-Cohen, *Exile in Mid-Qing China: Banishment to Xinjiang, 1758-1820* (New Haven: Yale University Press, 1991) 104). Convicts being delivered into exile, unlike capital criminals destined for interrogation, were expected to arrive safely and in good health after a lengthy journey. They may have been treated with more care than those criminals transported for investigation within the review system.

Still, though she does not focus on criminals' pre-trial transfers, Waley-Cohen's discussion of convicts' journeys to Xinjiang is the most detailed investigation into prisoner transfer written in English and many of her conclusions can be extrapolated to describe the more mundane transfers associated with the justice system. We should probably assume, as Waley-Cohen does, that officials treated prisoners of different status differently according to a faith in trustworthy and not so trustworthy classes of people. Waley-Cohen also usefully illustrates the redundancy in the system of official escorts to Xinjiang ("the Qing practice of 'escorting the escorts'" (Waley-Cohen 107)) as well as the copious laws regulating

punishment for failed escorts to suggest that the Qing had “official fears about the unreliability of the escort system—fears that were perhaps the product of experience” (Waley-Cohen 109). Presumably such experiences likewise drove the regulation of pre-trial prisoner transfers.

Most importantly for the discussion of pre-punishment prisoner transfer, Waley-Cohen draws attention to the manpower needed for this kind of mass movement of convicts as well as to the sheer number of people moving through imperial China. She points out that “a degree of cooperation was necessary even when all went smoothly,” (Waley-Cohen 135) since officials and escorts had to coordinate the transfer of convicts across several jurisdictions. She suggests that the system of exile “required a high level of efficiency” and “that the complicated logistics on the whole operated successfully is testimony to the continuing overall strength, despite its many shortcomings, of the Chinese governmental infrastructure in the late eighteenth and early nineteenth centuries” (Waley-Cohen 137). Thus, the characterization of the Qing that Waley-Cohen draws from her focus on the transfer of exiled prisoners is one of a functional, if not entirely efficient, governmental machine.

Waley-Cohen does not extend her conclusions about the sheer number of these transfers to consider the way these journeys may have impacted the landscape and people in between origin and destination. Though Waley-Cohen is interested in considering how exiles and convicts contributed to the social history of Xinjiang, she does not extend that interest to the areas through which exiles moved as they were taken from the imperial center to the far reaches of empire. Waley-Cohen’s work suggests that considering the legal practice of prisoner transfer more concretely could elucidate the social history and geography of Qing justice. A more coherent focus on the journeys prisoners took between administrative units within the criminal justice system (rather than focusing on the beginning and end of the journey) could expose new points at which the criminal justice system intersected with quotidian life; indeed we might begin to see the Qing legal system not only from the point of view of a captive or official, but from that of on-lookers, contributing to our understanding of how law was experienced and empire performed in late imperial China.

In addition to expanding our ideas of the ways in which social and legal history intersect, a more clear focus on prisoner transfer might allow us to further contextualize the documents on which legal history is based. In her work on litigation in the Qing Melissa Macauley suggests that we read legal documents carefully, as “powerful tool[s]” that “cannot simply be explained in the local context of village and town but in that thinly spun web of judicial authority from county to prefecture to provincial city and on to the capital” (Macauley, *Social Power* 3). I suggest that to make parts of this web more visible we might look at the actual movement of prisoners which produced these documents; by making prisoner transfer explicit we can start to see the strands in the web of judicial authority. By bringing these webs to light we can see the way in which those connections were important not only for administrators, but also for regular people: for criminals, magistrates and travelers on Qing roads. The webs of justice caught people other than criminals and administrators.

In his 2000 monograph on clerks and runners (*Talons and Teeth*) Bradley Reed likewise points out the importance of taking a larger view of bureaucratic administration. Reed suggests that lower level functionaries and the roles they played in Qing bureaucracy must be

considered if we are to characterize the Qing administration as it actually functioned rather than as it was intended to function. Reed and Macauley thus offer us a second area in which a focus on prisoner transfer refines our vision of the legal practice of the Qing: if we take both Reed's point (that we must see clerks and runners as fundamental to the practice of law) and also Macauley's (that to write history from legal documents we must understand the contexts in which they were produced) then in order to understand the administrative and social history of the Qing legal system we must not overlook prisoner transfer and the officials that carried it out, for these processes were fundamental to both the practice and writing of law in late imperial China.

From my broad outline above it is clear that prisoner transfer was a large part of the job of the officials responsible for local jails. Frank Dikötter's monograph on the implementation of Western prison technology in twentieth century China includes a brief section on the jails of the pre-twentieth century period. Dikötter characterizes Qing jails as similar to the imperial Chinese jails of the previous dynasties: jails in imperial China were holding pens for criminals awaiting corporeal, labor or monetary punishment. Though Dikötter describes the effect the growth of the nineteenth century must have had on the criminal population ("Many criminals sentenced to death were imprisoned and had their execution deferred until the assizes of the following year. In some cases capital offenders could spend up to twenty years in prison, and the overall number of prisoners subject to continuous postponements was very large" (Dikötter, *Crime* 29), he does not suggest that Qing jails or the system of confinement might have changed any time within the Qing dynasty; in fact he refers not to Qing jails, but to "imperial" jails. By characterizing pre-modern jails as fixed, Dikötter follows late nineteenth and early twentieth century reformers in their static image of the Qing justice system, an image which shores up the argument for reforming jails but which is not the most useful for the historian of late imperial China.

Also following the reformers of the late nineteenth century, Dikötter describes the squalor and risk of death in pre-twentieth century jails. I approached the topic of convicts dying in Qing jails from disease or malnutrition in chapter three, but the contagion issue might be clarified by noting that until the late nineteenth century many of these prisoners were escorted more than once to a higher court for questioning. We can better understand the danger of the filth and decay of pre-modern jails by supplementing Dikötter's description with an explicit discussion of the way that these prisoners moved between jails, eating old food, meeting new people and carrying with them disease.

But more to the point here, they also carried information. Dikötter focuses much of his discussion of modern punishment on the educational goals of modern reform programs, in contrast to the imperial system of corporeal punishment. The movement of prisoners through the Chinese landscape on carts, wearing the acknowledged clothing and markings of convicts represents a different kind of education: by demonstrating its power over living convicts the pre-modern justice system educated the public about the imperial hold over regular people, as well as demonstrating for would-be criminals a location for potential escape. This kind of education, its goals and implementation, may have both changed over the course of the Qing dynasty and influenced reformers more than simply by negation. When we understand the details of prisoner transfer we see more of the connections rather than the contrasts between the pre-modern and modern systems of punishment.

assuming that this practice was either simple or tangential to judicial procedure makes invisible the investment that the Qing put into transfer, its potential for danger, and the ways the empire worked to sustain it in the face of those dangers. I now turn to some stories that complicate our understanding of the transfer of criminals.

Old Yu

A somewhat extreme example will demonstrate the how large the investment in transferring and holding any one criminal might have become. Sometime around Daoguang 8, Yu Yingxuan was arrested in Baodi county. According to his arrest and prison records, Yu hurled a piece of wood at his wife in anger and accidentally struck his mother, who lingered unconscious for some time but eventually died.¹⁹⁶ Yu was arrested for matricide, a very serious crime under the Confucian-influenced Qing code.

Yu's case was not extraordinary: though matricide is not common, homicide is not uncommon, and the local magistrates seem to have pursued Yu's case in the normal manner. When he was sent to the provincial capital for review, Yu was sentenced to execution after the Autumn Reviews, and sent back to Baodi county to await his case's verdict. The order to execute failed to come: doctors' records show that in Daoguang 12 Yu fell ill in the Baodi county prison,¹⁹⁷ having already been through the Review system four times without receiving the order to execute. Yu was uncommonly hearty: he recovered, and fell sick and recovered at least twice more during his tenure as a prisoner of the Qing. By Daoguang 29 Yu was 78 years old: he had killed his mother in his mid-fifties, and his case had been through the Autumn Review system at least 20 times.

Thus Dikötter's work suggests a third area where a focus on the Qing practice of prisoner transfer clarifies our vision of the legal system: the Review system, indeed the entire criminal justice system, changed over time. Put differently, by considering the practice of law through the actual transport of prisoners we can start to paint a picture of Qing Case Review and the jails that supported that system as complex and dynamic rather than as static imperial institutions which merely formed the background against which modern prison reform was carried out.

I have summarized these historians' work in order to make three tangential points about the way that a more salient focus on the practice of prisoner transfer might refine our view of the late Qing imperial legal system. First, such a focus can open new connections between the history of law and the social history of the practice of law; we could begin to see the ways that imperial power was demonstrated in the streets of Qing China. Second, considering the way that human beings were shuffled through the Qing justice system further clarifies our view of the context in which legal documents were created. Finally, the changing practice of prisoner transfer (as opposed to the way in which it worked in an ideal world) and the evolving meanings of those transfers themselves for various contemporary observers helps us to write the legal history of late imperial China not as a static regime but as a dynamic system which responded in different ways to various pressures.

¹⁹⁶ STF 28-1-59-134 (undated).

¹⁹⁷ STF 28-1-59-117 (DG 12).

During Yu's stay at the Baodi prison he was transferred a number of times. Initially, due to the severity of his crime, he would have been reviewed and sentenced by the governors-general. Though I found no documentary evidence of Yu before Daoguang 12, we know that matricide required an initial trip from the county prison to the prison at the provincial capital, and that prisoners in Baodi county were not geographically exempt from such trips. Since he was sentenced to execution after the Reviews, within a year he would have made the same trip again so that the governors-general could re-interrogate him and consolidate his case file to send to the Board of Punishments in Beijing. Additionally, In Daoguang 20 the Baodi prison required repairs, and the prisoners, including Yu, were temporarily transferred to a nearby county.¹⁹⁸ In Daoguang 29 due to his age Yu's case was revisited, and his sentence reduced;¹⁹⁹ he may have been transferred another time to be interrogated by higher authorities on the subject of his age and personal situation. Once the authorities settled on banishment as his reduced punishment he may have been the subject of one final transfer similar to the kind Joanna Waley-Cohen describes in her monograph on exile.

Old Yu must have been a fixture at the Baodi prison, as he may have spent two decades of his adult life there.²⁰⁰ But transfer and interrogation were also fixtures of his life in prison; for Yu, perhaps the opportunity to leave the local jail and travel on the road in shackles and red pants was a rare treat to interact, however passively, with the world beyond the jail walls.

Yu's story demonstrates first a simple but often overlooked facet of the late Qing justice system: the standard nature of criminal transfer in the Qing justice system. As expected from the regulations outlined above governing investigation of the criminal at every level of case review, Yu visited the provincial capital multiple times. In addition he moved from one county jail to another when the jail required repairs; a situation not faced by every prisoner, but certainly one faced by every jail at one point or another. For Yu, as for the officials considering his case, transfer was a normal, if labor-intensive occurrence, one nearly all local and provincial administrations were set up to handle.

Certainly Yu's life in jail was not normal; less healthy criminals would have succumbed to illness during that time period. But the potential for an extended stay with many routine transfers existed for any criminals in the Review system, especially at the end of the Qing. Transfer was just one arm of a criminal justice system based on hard human evidence, on treating criminals as human case files. Though an argument could be made that in the

¹⁹⁸ STF 28-1-58-104 (DG 20) .

¹⁹⁹ STF 28-1-59-146 (DG 29/4).

²⁰⁰ According to standard procedure, a matricide would not have been released into the custody of family; he would have not even been allowed in the outer jail. While I have no evidence that Yu did not stay in the jail for this long duration, I have a hard time believing that prisoners spent every day in jail for two decades without the local officials letting someone—anyone!—take some responsibility for their upkeep. Perhaps my failure to believe that long term incarceration in pre-modern jails (gaols, according the Dikötter's terminology) occurred is evidence of how deeply ingrained I have let the Foucaultian distinction between modern and pre-modern punishment become in my late twentieth / early twenty-first century mind?

Daoguang period the administrative machinery was bloated and ineffective, clearly it was still robust enough to carry out the labor-intensive duty of managing and moving criminals like Yu.

The not insignificant burden transferring prisoners put on the Qing justice system underscores the centrality of the prisoner's body to the proper execution of Qing justice. Clearly the Qing privileged the hard evidence that an interrogated human being can produce over a more efficient, less labor-intensive system of justice. More importantly, the investment made in a single prisoner like Yu suggests that the proper investigation of captives could be used to demonstrate to passers-by that the empire was functional, even benevolent; routine prisoner transfers showed that justice was being carried out appropriately.

These transfers also reinforced the administrative networks that made that demonstration of justice possible. Connections between the local and higher offices were not only produced by faceless administrative mail-carriers, but also by lower level officials who arrived with captive criminals. Criminals themselves felt the power of imperial apparatus to shuffle them over the landscape and through the system, and passers-by on the road to local markets or to visit family saw the power of the imperial apparatus to capture and manipulate non-normative bodies. These transfers were so normal that even administrative documents saw no need to describe them; jailers moving prisoners was such a routine sight that even children could have followed the empire's administrative routes and sensed its potential power of punishment. It is of course hard to quantify the didactic power of these transfers, but we can speculate that they contributed to a widespread familiarity with the networks of administrative power in Qing China, and that this familiarity in turn reinforced these networks.

The transfer of criminals between cities also generates an alternate mapping for the connections between urban nodes in Qing China. Max Weber, famously, suggested that the Oriental city was defined by the reach of the central bureaucracy,²⁰¹ if we were to follow this Weberian geography and believe that transfer was a practice that effectively imposed and demonstrated imperial power on deviant members of society, then routine prisoner transfer demonstrates the central bureaucracy's autocratic reach, and its ability to do so over great distances. On paper, the ideal transfer protocol may follow Weber's vision of an effective but static autocratic empire. However, transfer's difficulties, and the changing nature of the practice seem to question such a simple Weberian mapping; I outline some of those difficulties below.

G. William Skinner contested the Weberian map of China as an interlocking set of cities and villages by drawing attention to regional characteristics and the networks between and within geographic micro regions.²⁰² An attention to the complexity of the practice of prisoner transfer suggests a China that resonates more soundly with Skinner's more refined mapping. In both Weber's formulation, in which China is the national sum of its constituent cities and villages and in Skinner's, in which China is a network of hierarchical regions, the city is important as a node of economic traffic and as a place where national and regional

²⁰¹ Max Weber, *The City*, Glencoe, Ill.: The Free Press, 1958; *The Religion of China: Confucianism and Taoism*. Glencoe, Ill.: The Free Press, 1951.

²⁰² G. William Skinner, ed., *The City in Late Imperial China*, Stanford, Calif.: Stanford University Press, 1977: 3-31, 275-351.

identities are produced and exported. We could project legal networks on to either of these, but the picture seems more muddled when we consider that criminals found opportunities on the road to contest the effectiveness of that power. Suffice it to say for now that when we see the empire as a whole through the lens of the networks reinforced by the criminal justice system it seems simultaneously autocratic and regionally specific, strong and weak.

Reinforcing bureaucratic networks through transfer came at a price. Putting criminals on the road was a dangerous proposition. I now look at some documents which illustrate some of the potential dangers of prisoner transfer and the ways that the empire responded to them. These dangers were varied, but, it seems, not insurmountable, and the imperial responses to them came at many times and from many levels of government; looking at the troubles with prisoner transfer exposes the system as dynamic, functional, and challenging.

The Trouble with Prisoner Transfer

Having considered the ways that transfer worked for two examples in the Daoguang period near the capital as well as the way that transfer was supposed to fit into the larger Review system, I now look briefly at some points earlier in the Qing at which routine prisoner transfer presented difficulties for the administration of justice. These short vignettes are meant to be illustrative but not exhaustive; archives are full of such examples of judicial administration gone awry. My intension here is to show the range of problems that an administrative dependence upon the transfer of prisoners brought up, as well as the empire's responses to those problems. The practical difficulties with transferring criminals represented a challenge to the empire in a double sense: first the realities of a system which required the transfer of most serious criminals was an administrative burden to an expanding empire. Second, a procedure that required the movement of many serious criminals across the landscape at multiple points presented those criminals with opportunities to challenge the Qing's power to incarcerate and punish.

Transfer's Dangers: Escape

The practice of prisoner transfer was so fundamental to the Qing justice system that its structural difficulties were met not with the abolition of the practice, but attempts from the highest authorities to note and correct its flaws. A major (but not, it seems, fatal) flaw with the system of transfer was the possibility of prisoners escaping en route. The dangers of escape were simple, but multiple: a criminal was never punished, officials failed to execute their duties, the corruption of runners and guards was made clear. Though transfer procedure was explicit about how, when, and where prisoners should move, taking criminals from one place to another naturally opened more possibilities of captives slipping away.

A straight-forward escape case from Qianlong 55 demonstrates some of the difficulties with moving prisoners. Ma Shunrui was to be executed for a sexual offence committed with a Mrs. Zhang (née An); from this report on the escape itself we have no more information about the original offence or the final punishment of Mrs. Zhang. Ma Shunrui and Mrs. Zhang were both in the process of being transferred from the county to the provincial capital for case

review. On the night of Qianlong 55 3/c3, accompanied by a set of guards and soldiers, they stopped in a town called Qingshui to stay the night.

The inn at which they were to stay was small, so Mrs. Zhang and her minders stayed in the city, while the male criminal was lodged at an inn. That night there were four people responsible for Ma, two soldiers and two runners. Two runners, Hu Cunren and Zhang Jinbao, lodged overnight in same room at inn with Ma, while the soldiers accompanying them were in an adjacent room. It was a windy night, and the two runners guarded until the third watch, when they grew weary and fell asleep. Sometime after that, Ma Shunrui “secretly twisted and broke his handcuffs and fetters,” and crawled away. By the fifth watch, the runner Hu Cunren woke up and noticed Ma’s absence; he called for the soldiers, but none of them could locate the escaped criminal.²⁰³

This description, narrated by the Jin county magistrate (the county in which the escape occurred), is neutral, but detailed. The time and spatial details are just enough to allow higher officials to place blame not on the practice of transfer itself, or on the way it was carried out, but on the runners and soldiers directly responsible for letting the criminal out of their sight. And sure enough, those sleepy souls were the first to attract the attention of superiors: “a criminal escaping while staying at an inn surely belongs to [the category of officials] not being careful... If they were guarding seriously, how could the four people staying in the inn with Ma all not notice while Ma cut his shackles and crawled over the wall?” The report goes on to cast doubt on the weariness of the runners who were supposed to be watchful over night: “[there must have been] illegal bribery to loosely apply the shackles.”²⁰⁴ Though this particular document does not list a punishment for the runners and soldiers who were unlucky enough to be evaded, we can be sure that this accusation of bribery didn’t end there, nor, I’d wager, did it end well for weary runners Hu and Zhang.

Escapes during transfer are common; my guess is that more escapes occurred on the way to somewhere than occurred while criminals were incarcerated. This topic itself is worthy of further research; though most cases I have run across end similarly to the one cited here, that is, by placing blame on the lowest officials, perhaps we can in the future parse more concretely the ways that the empire deflected criticism away from the transfer system itself and toward these administrative hired hands. For now, however, the important observation is that the practice of transfer itself offered criminals an opportunity to escape. Certainly it would have been safer and easier to not lodge a criminal at an inn in a far off village; this practice must have offered the empire something.

I contend we can find the value of routine transfer in two places. First, in the value of criminals as living documents, exempt from the mediation of local officials. The potential corruption of local officials seems to have outweighed the potential corruption of the guards and runners that transported prisoners for review. Put differently, the empire gained a check on the magistrates as they opened up the possibility for corrupt functionaries to release criminals.

Second, I believe that moving prisoners offered the empire something less concrete, that is, it allowed the Qing to demonstrate that they were overseeing local officials. Moving people through space reinforced legal networks as well as the idea that the Qing was

²⁰³ AS 099707.

²⁰⁴ AS 099707.

effectively integrated, the notion that the local office was truly under the watchful eye of the emperor. So while there was always the potential for corruption and bribery, it was obvious to anyone who used roads that once you committed a serious offence and found yourself within the purview of the justice system, you were in the clutches not only of the local magistrate, but also his superiors. Execution in public demonstrated one ending in the story of justice; prisoner transfer demonstrated the process of that justice. By showing that cases were reviewed by higher authorities the Qing reminded local officials that they were being watched (a reminder they probably did not require) and regular people that the empire was both benevolent and powerful. Prisoner transfer was, in this way, part of the empire's didactic performance of normativity.

Bribery and corruption are old saws in Qing legal archives; blaming the lowest officials is a venerated administrative tradition in this vertically integrated system. But whether we take Ma's escape case at face value and believe that the runners were corrupt or see this buck-passing as a convenient way to dismiss a straight-forward escape case by blaming the least powerful, the fact remains that not transferring criminals for higher review would have cut down on the number of opportunities criminals had to escape and runners had to accept bribes. Such a change did not occur, or when it did corruption was not the cited reason. But neither did the emperor throw up his heavenly hands in the face of the dangers of transfer. Rather, the way that prisoner transfer occurred continued to be regulated throughout the dynasty at different levels. I move on now to some other difficulties with transfer in order to illustrate some other ways that the empire responded within the justice system as established to maintain but further regulate routine prisoner transfer.

Transfer's Difficulties: Overlapping Administrative Units

The response to the escape of Ma Shengrui was complicated by the overlapping administrative units responsible for transferring criminals across large distances. Between the place the criminals originated, Anding county, and the place Ma escaped, Jin county, there was 160 li; though it seems that county officials attempted to communicate this escape properly, the distance made it difficult for that communication to beat the escaped criminal to the border. After pointing out that the distance between these counties may have allowed Ma to sneak back in, this communication goes on to suggest that neighboring provinces, as well as local military posts, all be aware of the case, so that these they might be on the look-out for the criminal. County officials, the military officials, the provincial officials and the Board of Punishments all had to be informed, so that all these overlapping and stacked administrative units could be privy to the same information. Even with an efficient communication system, reporting on this simple escape took administrative time and effort; it would not be surprising if criminals routinely disappeared into the hinterlands while multiple reports were sent to multiple offices. Suffice it to say, had this been an escape at a local jail, the chain of communication and the attempts to locate the prisoner would have been much simpler. Thus Ma's case demonstrates one way that the routine transfer of prisoners increased both the possibilities of escape and the complexity of the administrative responses to such escapes.

The transfer of criminals between nodes of civilization necessarily involves hinterlands; in order to see criminals within the walls of a capital, you had to move them outside of their own city walls. But these issues were even more complicated on the edges of

empire. Though, as outlined above, more geographically far-flung locations were exempt from transferring most criminals to superior offices for review, some places not exempt produced special challenges. In the Qing, sub-prefectures (*ting*) were responsible for both frontiers and regions populated by minority peoples, adding another level of administration to cases that involved non-Han regions.

I do not attempt an empire-wide outline of the practice of prisoner transfer here (though such a focused project would offer an important characterization of the practice of law throughout the empire), but a single anecdote from Guizhou in Qianlong 31 illustrates some of the ways multiply overlapping administrative units made the routine transfer of serious criminals more complicated.

In Qianlong 31 the administrators of several Miao regions of Guizhou received orders to re-organize the geographical areas under their control. The general imperative was to streamline the review of and reporting on criminals in theft and murder cases in the Miao borderlands, “whether near or far.” According to this order these Miao criminals should be transferred to the departments (*zhou*) for investigation, and then reported on. After that the departments and the sub-prefectures (*ting*, a unit between prefecture and department) should work together to organize and administer these cases.²⁰⁵ Though making a conclusion about any particular ethnic group or geographic region is outside the scope of the current project, clearly the administration of the edges of empire was always more complicated; the requirement to transfer serious criminals to higher courts for review revealed these complications.

The very phrase ‘transferring criminals for review’ focuses on the end points while suggesting the journey itself fade unproblematically into the background: while in theory this practice was as simple as a jail on either side with a review at the end, the middle of that journey was not always so smooth. The administrative reality of prisoner transfer is more complicated and diverse than laws and final reports might lead us to believe: different criminals came from different distances and through different spaces. The Qing response to this diversity of legal experience was to, at various times, more specifically regulate the practice. As the empire wore on, the burden of these regulations may have grown.

Transfer’s Burden: Too Many Criminals

In Qianlong 23, Board of Punishments officials in Hunan clarified more policies about the movement of criminals for review. The reason for this clarification was simple: “the transferred criminals from distant places are numerous” and thus, “because of the Autumn Reviews, every year there are criminals... sent to inns in country villages and they stay there a long time.”²⁰⁶ As the stories of escapes make clear, more criminals kept overnight in inns meant more opportunities for escape, bribery and coercion, and ultimately miscarriages of justice.

This report goes on to clarify specifically how long it should take to get prisoners from one place to another:

²⁰⁵ AS 082442.

²⁰⁶ AS 155237.

“Those who are 60 or 70 li away should follow the laws for transferred criminals covering 50 li in a day and hurry... [they can] go to the county and be taken into custody” (thereby avoiding all together the issue of staying at inns on the way).

“Those far away, up to 80 or 90 li and over 100 li, need not [avoid] inns between [locations] on the road. Most [of those inns] are in desolate border areas; dispatch the guard at night.”

“[if] in all the adjacent territory within 70 li there are no [adequate vendors], confer [with superiors]... The post must be immediately moved ahead of time.”²⁰⁷

This attempt to further define the transfer process in areas close enough to make the journey but far enough to necessitate unwanted interactions with the general population illustrates two unfortunate realities of prisoner transfer in the Qing: first, by the late Qianlong period the guidelines on transfer were already not adequate for every part of the empire. Diversity of landscape as well as of ethnic make-up complicated what might seem to be a very simple, if somewhat inefficient, system of redundant review and judicial oversight. In other words, though the laws governing the movement and review of criminal cases had specific exclusions and definitions about the distances traveled, those laws did not adequately cover every situation. Administering justice over a large, expanding and diverse empire was neither simple nor static: the law continued to evolve in response to the perceived threat of too many criminals on the road.

Second, the administration of justice in the Qing was not walled off from the general population. The imperatives from Qianlong 23 cited here are all responses to the perceived danger of criminals spending too much time in the journey between review locations. That danger seems to come from every direction: the criminals might escape into the countryside, the officials might succumb to bribery, the sheer number of criminals might overwhelm the resources available. But despite these multiple dangers, imperial officials did not suggest that the practice of transferring these criminals be curbed, merely that it be streamlined. Better regulation, not fundamental change, was the answer (for the time being).

Imperial edicts from the Qianlong reign confirm the assertion that even in the high Qing the practice of criminal transfer for review called for more specific regulation. In a summary document counting the capital cases from Shanxi in Jiaqing 1, the officials cite an undated imperial edict that makes reference to an overabundance of criminals in jails: “After the post-Review capital criminals are transferred to the province, [officials must] send a response document to every sub-prefecture and county jail... In the province of Zhili jailed criminals are 190 [or more] people; this is difficult for the jails... [and] too many for one location.”²⁰⁸ This edict also mentions the proper reporting for escaped criminals; routine transfer, too many criminals in any particular place and the potential for criminals to slip through the cracks were connected factors that concerned the empire for many years before the practice of transfer itself was questioned.

A second edict reminds us that the danger of escape had not passed once criminals’ cases were decided. “In every province, after the Autumn Review, criminals to be executed

²⁰⁷ AS 155237.

²⁰⁸ GSU 1610255. This document is damaged and poorly microfilmed, has no item numbers, and the edicts are undated. It is thus both difficult to read and difficult to cross-reference in the Shangyu Dang.

are transferred... and come back to department and county jails. On the return journey [there are] escapes.”²⁰⁹ This order approaches that problem by suggesting that some criminals should be kept at the higher jails. In this summary of several capital cases from Yunnan, the officials explain how and why they have followed this edict: “criminals at the jails are many. They must be scared of death... In every province the jail must be zealously guarded.”²¹⁰ They go on to outline how various overlapping units of governance have worked together to investigate and punish this year’s group of criminals.

This summary document repeats a concern we see in many places about groups of criminals stuck together both in jail and on the road. But beyond this common concern about the danger of larger groups of dangerous and condemned men, the citation of multiple edicts followed by a description of overlapping judicial jurisdiction makes clear another difficulty of responding to the challenges of routine criminal transfer by multiplying layers of rules: officials had to consult an ever-more complex body of legal literature every time they processed ordinary cases. Even early in the Jiaqing reign, the question of what criminal belongs where at what time in the review cycle was a complicated one.

Revising Transfer: One Local Response

Imperial responses to an overloaded criminal system were not unique either to the Qianlong period or to the practice of criminal transfer. Indeed, concerns about the population of captives continued into the twentieth century, prompting domestic and foreign reformers alike to condemn the Qing justice system as a whole.²¹¹ But not until the period surrounding the Taiping rebellion was the automatic review of all capital cases suspended on a large scale, rather, officials continued to reform the transfer of prisoners from within the criminal justice system. I finally return to Shuntian prefecture, to Baodi county, to look at a later response to the perceived danger of too many criminals. This reform, like the Qianlong era ones cited above, reacted to a glut of criminals on the road by adjusting the way in which those criminals moved.

In Daoguang 2 the Baodi county officials received an order from the Shuntian prefecture, an order which in turn came from the Surveillance Commission (*ancha si*). This order required each district to re-examine their policy regarding the transfer of Autumn Review prisoners for interrogation and trial.

... All of this year’s review prisoners from every area have already been continuously transferred [to higher authorities]. Investigate [this situation]. According to the old regulations, within one day they should begin cautiously going back along the route. [in order to] be cautious, delay significantly [the time they go back]... When this order is received, immediately set a time and assign officers to wait and have [criminals] transferred. If [one group] should meet the prisoners in front of them, at that time [they must] immediately send the first criminals [on] to the border. Devote yourselves

²⁰⁹ GSU 1610255.

²¹⁰ GSU 1610255. This document is in rather poor condition: I’m making some guesses here.

²¹¹ This perception also trickles down through academics to influence our own understandings of Qing jails; this is a topic I take up in the epilogue.

to safeguard against a lack of guards. In the future it is inappropriate to transfer criminals at any convenient time and to fail to report [on this issue].²¹²

As we can see, in the first years of the Daoguang emperor's reign the system of criminal transfer continued to fail to smoothly move prisoners between judicial locations. Transfer's periodic difficulties seem to have continued for many years; this observation is an important corrective to the static vision of local and imperial government that we inherit on the one hand from the canonical legal texts themselves and on the other hand from scholars who have followed those texts.²¹³

In Baodi county in Daoguang 2 the potential problem was brought on not by escapes nor corruption, not by complicated administrative units nor by rebellious criminals, but simply by a large number of bodies. As jails backed up with Review prisoners like the grave robbers Wei or old Yu failing to advance or be dismissed,²¹⁴ the number of criminals arriving at higher courts for review likewise grew. And when the proceedings finished, most of those murderers thieves and adulterers had to be transferred under lock and key back to their respective local jails. At the end of the Autumn Review cycle a large, ostensibly captive, somewhat distasteful group of (presumably) men embarked on the same roads everyone else used. Some were returning to face execution; we can understand if they might try something desperate on that final journey.

The retention of convicts within the Autumn Review system combined with the required redundant re-investigation of all serious criminals was clearly a drain on the human and administrative resources of the Qing empire. Official responses to that drain continued, in the face of the population growth of the nineteenth century, to be attempts to streamline the procedure. The corrective received by Baodi county focuses on how to minimize the impact of criminal transfer on the road upon which prisoners were forced to travel; here we see most plainly how an interest in public safety was balanced with an interest in continuing the practice of transferring many criminals for review. As the population of criminals grew, two commitments pulled the justice system in different ways: on the one hand the treatment of criminals as living documents who needed to be redundantly interrogated necessitated groups of prisoners on public roads. On the other hand, groups of people of any stripe, much less the desperate condemned, were one of the Qing's more salient fears: throughout the Qing code groups of people are characterized as potentially riotous or rebellious mobs and regulated carefully. This early Daoguang reign order shows us that these contrasting commitments, already difficult to balance in the Qianlong era, became particularly difficult to maintain in the face of a growing population of Review criminals.

Still, that difficulty did not yet prompt Qing officials to do away with the system of redundant re-investigation of all serious criminals. Not until the judicial pressures of the Taiping Rebellion was the rule recalled which demanded that all execution cases be reviewed by the Board of Punishments and the emperor himself.²¹⁵ Though here and throughout the late Qing we see the balance between public (or imperial) safety and criminal investigation

²¹² STF 28-1-55-31 (DG 2/4/18).

²¹³ In particular administrative historians such as Ch'ü T'ung-Tsu and Sun Jiahong.

²¹⁴ An issue I take up in chapter five.

²¹⁵ The precise timing of the implementation of the *jiu difang fa* rule is debated, but its wider use occurred around the Taiping rebellion.

threatened, the administratively difficult process of criminal transfer remained, for a time, an unquestioned facet of the Qing criminal justice system. In the face of these challenges, the Daoguang emperor did not suggest that criminals not be transferred; it is a testament to the commitment the Qing retained to multiple inspections of captive criminals that when the Review system was overloaded, the system of criminal transfer was repeatedly altered at the local level rather than abolished. The redundant investigation, reinforcement of networks and quotidian demonstration of justice that the practice of routine criminal transfer offered was still too important or the practice too deeply ingrained to question its existence.

In short, this order illustrates again the importance the Qing empire continued to place not only on inspecting captive criminals but on moving them through public space. Clearly when faced with trouble on the roads there are easier solutions than continuing to move criminals on those roads: officials could move to the jails where criminals were held (as was standard procedure for some remote districts), reviews by higher authorities could be abolished entirely; these reforms were not comprehensible to the Qing powers despite many years of corrections to the system of criminal transfer. Qing officials opted instead to maintain the routine of transporting captives through the streets, allowing local offices to demonstrate their connections to central authorities for the public to witness. While historians are familiar with many of the mundane elements of public life in late imperial China— festivals, going to the market, witnessing public executions—witnessing the transfer of criminals through the public street has rarely been discussed. It must have been a regular occurrence to pass prisoners in shackles and red pants on the street in Qing China, and in Daoguang 2 officials took care to preserve this facet of the urban landscape.

This order may or may not have worked. Just four years later in Daoguang 6, officials in Baodi county received another order from their superiors at Shuntian prefecture. This later order explicitly refers to the potential of criminals to escape while on the way to be interrogated, and like the earlier order suggests a better timetable for the transfer of criminals and files. In the Daoguang 6 order, the higher authorities defined the time period in which criminals should arrive at the provincial capital, and reiterated the ways that reports on various classes of criminals (new, old, reduced sentences, dead, etc.) should be written.²¹⁶ Clearly the organization of criminal transfer left many things to be desired in these early days of the Daoguang reign, both in terms of written reports and the actual practice of transfer. Lower level officials and their functionaries, as was the case for centuries, shouldered the responsibility for these administrative problems. They were also expected to keep the system moving through all the turmoil of the nineteenth century. In both of these orders we see higher authorities responding to a possibly overloaded, but certainly troubled system of criminal transfer by more carefully defining how local officials should do their jobs. Notably, that response occurred within the system rather than outside it. In other words, in the early Daoguang period and earlier, the process of Case Review remained a dynamic legal system capable of responding to challenges while preserving its basic organization, but always facing challenges from both the corruption of local officials and, potentially, from the very nature of that basic organization.

The Qing interest in the public demonstration of imperial power over both criminals and local officials is entwined with the judicial system's reliance on the evidence produced by

²¹⁶ STF 28-1-55-43 (DG 6/2/22).

those captives. To achieve both of these goals the Qing used the criminal's own body; the captive body was the medium upon which imperial justice depended and through which imperial power was demonstrated. While corporeal punishment plainly and dramatically illustrates the way imperial power is enforced in public upon the bodies of deviant members of society, the Qing justice system's repeated transfer of prisoners both within and outside of the Autumn Review system more subtly shows the mundane nature of these uses of captives to demonstrate and enforce imperial power. The routine transfer of prisoners to higher courts for re-trial fulfilled multiple goals of the Qing imperial bureaucracy: these transfers allowed each court to base their findings on the physical evidence produced by the criminal himself, allowed imperial authorities to show their power over local authorities and allowed local authorities to demonstrate their power over those charged with crimes. Judging the returns that the Qing gained from their investment in prisoner transfer is difficult, but I contend that we should look to the balance of power and benevolence demonstrated in public to locate those returns. That the practice was adjusted throughout the later Qing, but not abandoned in the face of nineteenth century challenges is a testament to its importance.

Perhaps the most famous of scholarly accounts of public execution is the public punishment of a regicide in Foucault's *Discipline and Punish*. In 1757 that regicide was moved from jail to the awaiting scaffold in the public square. In comparison to the description of the execution itself, Foucault's description of the condemned criminal's final journey is brief and perhaps forgettable despite the cruel details: the criminal was made to ride in a cart through the public streets wearing only shirt and carrying a wax torch. I do not mention Foucault because his structure or methods inform my reading of prisoner transfer (though they clearly do), but because I believe Foucault's attention to the prisoner's final destination masks the way in which that prisoner got there. When we focus solely on the dramatic performance of corporeal punishment we miss the labor behind the scenes that allowed both the prisoner and officials to arrive at the show. In the case of the Qing dynasty, that labor represents both a staggering imperial investment in the concept of the evidence produced by the criminal as incontrovertible documentation of the crime and an important performance of the everyday power of empire.

The stories I have cited here; of the Wei brothers suffering different fates at the hand of the Qing justice system, of Yu Yingxuan waiting in jail for much of his adult life, of the various ways that the empire was challenged and responded to the practice of routine prisoner transfer; are all narratives that would be left out of a history written based on central case files or law codes and that only come to light when we focus on the administrative practice of prisoner transfer. These stories remind us that the Qing legal system was not separate from public life and that the Qing bureaucracy valued this intersection between daily life and the performance of justice. People on the street knew more about the treatment of criminals than a focus only on the spectacular rituals of despotic power might suggest. Rather, the proper execution of punishment was complexly and not always ideally entwined with the everyday world.

Chapter 5. Performing Benevolence: Commutation, Delay and Reduction of Capital Sentences in Autumn Case Review

In the nineteenth century in Guangdong's Dongwan county, local officials dealt with no fewer than 2,004 criminals associated with the same plot.²¹⁷ The majority of the criminals in this case were sentenced to death by decapitation or strangulation. The crime was so egregious that officials went beyond the usual death penalty to set a clear and grisly example: thirty-three of the criminals listed suffered decapitation followed by the display of the criminal's head in a prominent public location.

Not all of the criminals sentenced to death were executed, however. Sixty-two of them died of illness or committed suicide before they could be punished. Of those who died without punishment, Twenty-two were supposed to be decapitated and have their heads displayed; as they escaped this punishment, it was decided that their bodies should be mutilated as a post-death punishment.

These most horrific displays of power might be used to tell a familiarly lurid story of the downfall of pre-twentieth century empire: pre-modern punishment, doomed to fail, was inhumane on a grand scale, unlike modern punishment, which employed (and employs) more insidious manipulations. But if we read on beneath these gruesomely compelling (and I believe rather rare) punishments, we can see that nearly as many of the criminals in this case were pardoned as those who were dispatched in the empire's most gruesome ways: fifty-six criminals sentenced to decapitation were excused. Twenty who died awaiting decapitation were likewise proclaimed to have "extenuating circumstances" and thus excused from the punishment that they didn't live to receive.

Both parts of the imperial response to this case matter. The brutal public display of imperial power and the capacity of the Qing to grant exemptions to punishment are interdependent and, I argue, essential to our understanding of justice in late imperial China. This assertion is not new: for centuries, scholars have pointed to punishment in imperial China as an example of the unlikely marriage of Legalist and Confucian ideals, identifying a regime that simultaneously (and at times contradictorily) enforced an unyielding code of conduct and bestowed benevolent favor on subjects who had gone astray. I, however, would like to consider the practice of commuting sentences in the Qing with less concern for its philosophical underpinnings and more concern for the diversity of ways that capital sentences were put off, reduced and dismissed outright.²¹⁸

In this chapter I parse the Qing practice of delaying and re-sentencing in order to demonstrate the multiple ways that capital sentences were neither fixed nor simple. In

²¹⁷ LFZZ 4001-011. I have no information on this crime other than this one tantalizing document which outlines the number of criminals receiving each punishment. The archive has dated this only Daoguang, and not identified it as associated with the Taiping uprising. Presumably this was a crime of note, as this memorial preserved in the Grand Council's collection of copies bears a mark showing it was read by the emperor himself.

²¹⁸ One might call this the mutation of capital punishment, rather than the commutation, if one was so inclined.

describing this part of the Autumn Case Review system,²¹⁹ I complicate the paths that criminals took from crime to punishment as well as illustrate that death sentences did work for the empire when they were commuted as well as when they were executed.

If an empire is to be judged by its final failure, the Qing's investment in benevolence (or perhaps in justice) that I outline here was a poor one. At the end of the nineteenth century the system that kept capital criminals around hoping for release was full, and the rebellions of the late Qing finally forced fundamental changes in the ways that death sentences were executed. My interest is less in explaining the end of empire than in understanding how it functioned in less dramatic times: first I will outline some general rules behind the commutations of capital sentences, explaining in brief the capacity this system had to retain criminals and reduce sentences. Then I will turn to examples in order to demonstrate the ways those ideals were put into practice and give some sense of the large and complicated investment the Qing made in not executing capital criminals. To finish, I'll briefly revisit how our definition of justice in the final days of the nineteenth century might more specifically take into account the history of that investment.

This chapter is not about how or why specific cases received or did not receive commutation. The analysis of the legal reasoning for any one case has been an important part of Western scholars' approaches to crime stories in late imperial China.²²⁰ My concern is with the administration and performance of sentences which were suspended and reduced. Though the story and reasoning behind each particular case is fascinating and to a certain extent motivates my interest in the subject, here I offer a description (complicated and piecemeal though it may be) of the process overall as well as some ways that process may have changed over the dynasty.

There are many ways in which and many points in the judicial process at which sentences were suspended or reduced. I have chosen here to present the commutation of sentences as a unified topic in order to highlight the many paths that criminals took away from the execution grounds and in order to clarify other reasons that people lingered within the justice system before and instead of being executed. I use the term 'commutation' broadly. In English commute can mean, at its most vague, exchanging one object for another. In the vocabulary of the American justice system, the verb *to commute* means to reduce a judicial sentence, usually from a death penalty to something less severe. I'm using the broadness of the English to my own advantage here, rolling up several Qing era categories under this heading. Though commutation is a natural category for the American scholar interested in how people did not get executed, it was not a natural category for the Qing justice system itself. Thus I may be doing the men who operated that system a disservice by imposing my categories on their daily practice, a practice which, I argue, took up a significant amount of those men's work hours.

²¹⁹ Sentences were commuted both through the Autumn Case Review system and outside of it. Further, the new sentences placed criminals into the Autumn Reviews and accelerated others out of it, so the relationship between the reduction of sentences and the Case Review system is not simple. As my larger focus is on capital punishment as executed through Case Review, most of the cases I discuss here are associated with those reviews in one way or another.

²²⁰ Kuhn's *Soulstealers* and the various works of Jonathan Spence come to mind: I outlined some of those works in chapter 1.

Part of the difficulty in considering sentence reduction lies in the concept of a ‘sentence.’ In Western jurisprudence, a sentence identifies the punishment assigned to a person; it implies that that person has already been through some process to find him guilty. As criminals within the Qing justice system were assigned a punishment and identified with that punishment from the moment the crime was brought to light, I am twisting the term ‘sentence,’ ignoring its Western implication of completed trial. Qing ‘sentences’ could have been changed at any point in the multi-layered review process, as long as they were properly reported and agreed to by central authorities. The point at which we should start calling a sentence reduction a ‘commutation’ is debatable: I have based my choice here primarily on the vocabulary used, including the processes of sentence reduction and dismissal that previous Western scholars have identified as commutation.

The Qing vocabulary concerning the reduction of sentences is more specific. There are a few judicial categories I will discuss in this chapter. Stays of execution (*huanjue*), though not necessarily ending in a reduced sentence, are an important step in the judicial process of changing death penalties. For criminals and officials, stays of execution were a common, even expected part of the experience of administering a death penalty. The term ‘mitigation of sentences’ (*kejin*) was used on cases reduced within the yearly Case Review system. These reductions were based on the facts of the case as well as on the criminals’ situations. The term ‘caring for one’s parents’ (*liuyang*) was used to mean the reduction or suspension of sentences on cases which were commuted in order to allow criminals to carry out their filial duties.²²¹ Some mid-level documents were marked ‘leniently exempt’ (*zhunqi kuanmian*), a phrase which connotes imperial benevolence. Another idiom indicating imperial favor ending in a lesser sentence is ‘there are extenuating circumstances’ (*qingyou keyuan* or sometimes just *keyuan*, ‘pardonable’). Here I will lump all of these categories under the umbrella term ‘commutation’ in order to present a full picture of how people sentenced to a death penalty were *not* executed, either temporarily or permanently.

Reduction of Sentences: General Categories

In the beginning of chapter two I investigated the bureaucratic realities of one important principle of imperial Chinese justice at play in the reduction of sentences: the theoretical requirement that the emperor would sign off on every death sentence. Here I’d like to briefly note another general principle of Qing (or rather, imperial Chinese) law: sentences were based on social standing as well as on crime. In other words, part of the process of initially assigning punishments included automatic reduction of sentences for the young, the old, officials, people mourning the death of their parents, the supporting sons of elderly parents, etc. This principle is so broad and fundamental that many parts of Qing legal documents make it explicit. Reduction of sentences was in theory codified and thus not dependent on an official’s judgment. Thus, from the Qing code Art. 36 Rules for Adding to or Reducing the Penalty:

... “The two [penalties] of death and the three [sentences] of exile, are treated as being equal to one degree for reduction (*the two [penalties] of death are strangulation and*

²²¹ In “Selected Sources” Thatcher translates *liuyang* as simply “commutation of sentences.”

beheading. The three [sentences] of exile are exile to 2000 li, 2500 li, and 3000 li. Each [category i.e. both of the death penalties taken together or all the three degrees of exile taken together] is the equivalent of one degree. If an offence punishable with death is reduced one degree, then sentence to exile to 3000 li, and the punishment is reduced one degree, also sentence to three years of penal servitude.)”²²²

This type of reduction in sentence was meant to be applied at the time the crime was initially committed and memorialized. If punishment worked instantly that would be the end of the issue of reduction of sentences based on the criminal’s status. But, like most judicial wheels, Qing law rolled slowly and rustily forward, meaning that crimes and sentences might not occur in the same year, complicating the issue of sentence reduction.

The code also outlines how to deal with those people whose sentences no longer fit their changed status. One example, from Article 23:

*If one who is 69 or under commits an offence, and when he is 70 the matter comes to light, or at a time when he is not infirm he commits an offence, but when he is seriously disabled the matter is discovered, then he may redeem as one who is aged or infirm.*²²³

The status of the criminal at the time of the punishment is as important as his status at the time of the crime; a criminal who either escaped detection or waited for punishment into his 8th decade was subject to a reduced sentence as well. For some unknown number of cases this particular kind of leniency required old cases to be re-examined and re-assigned punishment. Without even venturing into the more chronologically-specific statutes, sub statutes or edicts, we can see just from these parts of the code that, in theory, the more slowly the justice system moved, the more people sat and waited for their assigned punishment, requiring more people to have commuted punishments.

In addition, as we know, all capital punishments were to be reviewed personally by the emperor. The scale at work here is astonishing: requiring a single person to sign off on every last execution was no small requirement; many criminals may have waited for many years purely because the case load was so heavy. During this time their personal circumstances could naturally change: most commonly they would grow old and their parents would die, changing the way that they were seen in the eyes of the law. Thus, the criminals who sat around while their cases were reviewed on multiple occasions needed to sit around more so their cases could be re-investigated and reviewed again. On paper at least, this administrative circle was vicious.

I rehearse these judicial ideals here in an attempt to clarify two simple points: first, the basic tenet of Qing justice that punishment should be based on social standing as well as on the facts of crime gave rise to a need for investigation that continued as long as the criminal was in jail awaiting punishment. Put differently, the official’s duty to collect information about any one case was not discharged until the punishment was either seen through or dismissed. Second, the basic tenet of Qing justice that the emperor must review all capital crimes produced a population of aging criminals who continued to need investigation and reporting until their punishments were over. The volume of work these two principles together produced is staggering. Even in the abstract, we can see that the Qing bureaucracy

²²² *The Great Qing Code*, Jones trans. 69, all italics and brackets in original.

²²³ *The Great Qing Code*, Jones trans. 53.

required a huge investment (in terms of manpower and paperwork) in the concept of executing punishment in a way proper both to the status of the individual involved and in a way that performed proper administrative oversight.²²⁴

The simple problem of compounding numbers of criminals, whether theoretical or real, is part of a broader numerical issue in imperial Chinese justice that has attracted the attention of previous scholars of Chinese law. Brian McKnight suggests that this dilemma existed throughout imperial Chinese history: “The problem was thus in outline a simple one. Fifty million people could commit far more crimes than eight hundred judges could handle.”²²⁵ McKnight looks to the reduction of sentences to explain this phenomenon, finding in general amnesties a kind of safety valve for this imbalance: “What I am suggesting is that the system of frequent amnesties which begins with the rise of the empire and continues for more than a thousand years was one solution to a problem created by an imbalance of institutions.”²²⁶

Qing law provided for the kind of general amnesty that McKnight argues helped the empire manage an expanding population. The emperor could periodically proclaim days of amnesty for all criminals, demonstrating his benevolence as well as reducing the captive population. Technically, however, many capital crimes were exempt from these get out of punishment free days, and those whose punishments had already been reduced were also exempt. I am interested primarily in capital criminals in the Autumn Case Review system; this exemption would have applied to many of them.²²⁷ Some of these general amnesties could be extended to capital criminals as well, by special decree. In sum, despite exemptions, these rules allowed the highest authorities to wipe the slate clean for any particular criminal or group of criminals.

However, in his investigation of amnesty throughout imperial China, Brian McKnight suggests that the use of these empire-wide amnesties was at a low point in the Qing. Using primarily data from the *Qingshi Gao* (*Draft History of the Qing Dynasty*) he estimates the number of amnesties:

Only seven empirewide amnesties were issued during the last fifty-six years of K’ang-hsi’s reign—an average one every ninety-six months. His successor, the Yung-cheng Emperor (r. 1723-1796), issued amnesties only during the year of his accession, and the long-lived Ch’ien-lung Emperor (r. 1736-1796) issued only eleven acts of grace in his sixty-year reign.²²⁸

²²⁴ Not an investment, I’d like to note, in the concept of innocence. That would be a misunderstanding, I believe, a dangerous projection of our own judicial priorities.

²²⁵ McKnight *Quality of Mercy* 117.

²²⁶ McKnight *Quality of Mercy* 119.

²²⁷ “In addition, there are cases (in which, although the one sentenced does not completely escape [punishment],) his [sentence] is reduced to a lighter one (this refers to such matters as reduction of death to exile, exile to penal servitude, penal servitude to beating). Both of these cases are not within this rule. (This means that they are not included in the rule for offences that are not included in a general amnesty.)” *The Great Qing Code*, Jones trans. 47, Article 16.

²²⁸ McKnight, *Quality of Mercy*, 98.

McKnight concludes “without qualification that the number of acts of grace declined in the late imperial period.”²²⁹ Thus, although empire-wide amnesties were possible in the Qing, they were neither common nor were they automatically extended to many of the criminals awaiting punishment within the Case Review system.

McKnight suggests that the changes in the Review system itself from the Ming to the Qing may have worked to counterbalance the decline in the use of general amnesties. Unlike in previous dynasties, the codified Review system of the Qing allowed emperors to suspend both the review of and the execution of cases marked for review: McKnight clarifies the difference between suspending the reviews and suspending the executions, but the outcome for the entire system was the same:

The reviews themselves were to be conducted. Those who were to benefit would benefit, but in addition to those who would have been liable for execution were also permitted to live, at least for another year.²³⁰

We can see from McKnight’s limited numerical analysis that even though fewer criminals overall may have benefited from empire-wide amnesty in the Qing, within the context of the Autumn (and court) Reviews, there were many years when final punishment or judgment was put off across the board.²³¹

Benevolent Ideals in Practice

As McKnight puts it “Without in any way prejudging the motives of the Chinese emperors I think we must say that in practice, from the viewpoint of those most directly affected by it, the traditional Chinese judicial system was often astonishingly benevolent.”²³² Here I would like to look at some of the ways that that benevolence, or at least practical attention to the problem of too many criminals, was carried out within the Case Review system. I approach this problem by parsing some of the different ways that criminals got (or didn’t get) reduced sentences and considering how those investigations were carried out.

Having outlined some theoretical requirements and realities, I will move on to look at some documentation from throughout those processes to consider a few of the many practical ways that sentences were reduced. I’ve organized the discussion that follows around the various vocabulary used on different documents about commutation and have attempted to go from the bottom up in order to show again how the work of lower level officials was not always apparent in the documents produced by central authorities. I end with the nineteenth

²²⁹ McKnight, *Quality of Mercy*, 150 n 10.

²³⁰ McKnight, *Quality of Mercy*, 108.

²³¹ McKnight’s summary for these suspensions is as follows:

- During the last forty-five years of the Kangxi emperor’s reign: death penalties were suspended for twenty-one years, the reviews themselves were suspended in seven.
- During the Yongzheng emperor’s reign: executions suspended in eight years.
- During the Qianlong emperor’s reign: executions were suspended in ten years of his first twenty, but only two times in during the last forty years of his reign. (McKnight, *Quality of Mercy* 108-109).

²³² McKnight, *Quality of Mercy*, 112.

century, when the Qing's commitment to enacting benevolence in changing situations was re-organized in the face of new pressures.

Commutation by Delay: Administering Stays of Execution

An important and often poorly understood part of the system of Case Review was the practice of putting a final decision off until the next year's review cycle. Though this suspension of a final decision does not necessarily indicate that any particular case would be granted a reduced sentence, it was often a step in the process that eventually ended in reduced or dismissed punishment. Cases marked as *huanjue*, which I translate as 'stay of execution,' are common in both local and central documents, but the quotidian paperwork of lower level justice officials documents the practice of sentence delay more clearly than do formal case records. Formal case records, those sent to the central authorities for final approval, make reference to the number of times any case has undergone a reduction in sentence, but as the details of the case itself are at issue in these reports, initial and final punishments and the time it took to execute them are secondary. The reduction of this kind of evidence is a parallel process to the one I outlined in chapter two: in the practice of staying executions we again see how the functioning of empire relied on vanishing data. Evidence from lower level justice officials tends to suggest two important points about the practice of staying execution: first that capital sentences were commonly put off for years and second that putting those sentences off resulted both in more jailed criminals to support and in more capital sentences commuted to lesser sentences.

Quantifying the practice of offering stays of execution within the Autumn Case Review system is difficult, as are most numerical generalizations about the Qing justice system. James Lee's numbers suggest that more cases were executed than commuted, but together those cases still only cover under half (and closer to a quarter) of the total capital cases. Lee's methodology remains difficult to unravel, but I think for general trends we can follow him in believing that most capital cases from year to year were stuck in a holding pattern.²³³ Lee's estimate is just that: attractive though it may be, finding a precise number of stays given each year as a percentage of the total number of cases under review is a practical impossibility. For the same reasons, it would be difficult to say how long an average case within the Review system waited for execution or commutation.

We can make some educated guesses, however: one way to approach those cases which were put off from year to year is to look at how they were administered and reported between the central Board of Punishments and local officials. As early as the Qianlong reign, the emperor and the Board of Punishments noted a need to split the administration of cases in the Review system into two groups: those which had been issued stays of execution more than three times and those which were newer. In an edict from Qianlong 18,²³⁴ the emperor states

²³³ James Lee, "Homicide et peine capitale," Tableau 1, 119-120.

²³⁴ AS 081902. Quoted here as an edict in an *yihui* from QL 30 about Guangxi. I have searched for this edict unsuccessfully in the *shangyu dang*. Another Academia Sinica document, AS 100534 seems to indicate that this rule was not an edict but a memorial. However it was issued, I have not given up on the possibility of finding the quoted rule

that “court and Autumn Case Review criminals who have been given stays of execution three or more times” should be reported upon in a different way than those entering the review system for the first, second or third time.

This brief clarification of the administration of the review system indicates that by the Qianlong reign there were cases repeatedly given stays of execution. It seems that there were enough of these cases that had been waiting for more than three years to be executed that it caused some administrative confusion, requiring the emperor himself to define three years as the horizon for flagging such cases for extra attention and reporting. This edict thus identifies repeated stays of execution as an issue before the population boom of the nineteenth century; I will return to this topic at the end of this chapter. Stays of execution were allowed and expected from the moment the Qing code took over from the Ming, and were issued so extensively and repeatedly that even by the Qianlong reign the administration of those waiting for execution required clarification.

In response to the imperial directive of Qianlong 18, Guangxi officials sent a summary communication outlining the numbers of criminals in their care who had received stays of execution.²³⁵ The numbers are telling: between the Yongzheng reign and Qianlong 18 when this communication was written, there were 63 capital criminals in the Court Review system who had been given stays of execution three or more times, and 3354 capital criminals in the Autumn Case Review system who had been given stays of execution three or more times.²³⁶

It is clear here that in the early Qianlong reign both review systems retained criminals for more than three years at a notable rate. This particular provincial response to the emperor’s requirement that such criminals be re-organized and re-reported to the central authorities identifies mourning as the primary reason that many stays of execution were handed out. The language on this report from Qianlong 18 differs from that in later reports on the same subject. Here the Guangxi officials enumerate the number of criminals within the Court and Autumn Case Reviews given “mourning stays of execution” (*die huanjue*) three or more times. The more common phrase in later reports eliminates the reference to mourning, simply referring to “stays of execution” (*huanjue*). Though there are a few possible reasons for this change in nomenclature,²³⁷ I believe that this early assumption that stays of execution were given to allow sons to conduct proper mourning rituals is not insignificant: when the issue of criminals staying in the system for longer than was ideal first came to the authorities’ attention, they took mourning to be the reason for this retention. Mourning a parent is of course carefully protected under Qing law, so stays of execution given for this most Confucian of responsibilities do not identify a problem with the justice system itself. Rather,

elsewhere: as more of these canonical legal texts are digitized searching for this kind of cross-reference will get easier.

²³⁵ AS 100534.

²³⁶ The comparative numbers between the court and Autumn Case Review systems here are also illustrative: the Autumn Review system accounted for a vastly larger number of the criminals in the justice system.

²³⁷ This change could just be a result of my own imperfect sampling: I have seen far fewer documents about the reduction of sentences in the QL reign than in later reigns. Further research may correct my assertions here about the change in language.

it may indicate the opposite: that the justice system and the death penalty itself were functioning in a benevolent matter.

The rules for reporting cases given three or more stays of execution got more complicated as time went on. In a routine report from Qianlong 30, officials from Guangxi clarified the organization of criminals in their care who had waited for three or more rounds of the Review cycle.²³⁸ This organization was not simple, as another rule, that of Qianlong 26, required that criminals who are officials, be entered into the Review system differently. In this short document, which was a kind of cover sheet for the cases referenced,²³⁹ the officials in Guangxi organized a set of criminals in order to reduce their sentences according to the rules from both Qianlong 18 and 26.²⁴⁰ By quoting both these laws, these officials were attempting to make very clear that they had appropriately attended to the number of times any one criminal had been given a stay of execution, as well as administered the reduction of those sentences according to these multiple rules. In order to reduce the sentences for cases like these that had been given more than three stays of execution the officials writing this report had to consider foundational legal texts, edicts issued by the emperor on more than one date, the kind of criminals they were dealing with as well as the criminals' family situations, the number of times those criminals had been given stays of execution, and the type of report they needed to issue. This confusing administrative process need not obscure one simple point: stays of execution were routine and common in the Qianlong reign and later. So routine, in fact, that officials, from those in charge of criminals up to the emperor, had to consider these stays of execution before reducing or carrying out punishment.

One natural outcome of criminals waiting for punishment for years was that their ages and family situations changed. A long wait combined with the requirements that criminals be punished according to their age and family situation at the time of punishment meant that magistrates had to take into account the number of times punishments were stayed when preparing yearly reports. Take, for example, the truly hearty Yu Yingxuan,²⁴¹ whom we met in chapter four, the man who accidentally killed his mother at least 22 years before his capital punishment was commuted to exile. His case was identified as a 'stay of execution' for two decades, during which his age advanced. When his case was finally attended to he was in his 70s and the magistrates in charge of him took the initiative to suggest to the higher powers that he should perhaps be subjected to a lesser punishment. In order to make these reports properly, Yu's relatives and neighbors were dragged down to the yamen and swore affidavits, all identically worded, that stated that he was, indeed, old.

²³⁸ AS 081902.

²³⁹ This document is an *yihui*, which were generally were attached to other documents.

²⁴⁰ This document is a clarification about the kind of reporting required: the QL 18 rule appears to have required reports on the reduction of sentences in these cases to be written in a separate document, while the QL 26 rule appears to have allowed that information to be written as a part of the case record itself (*an*). The officials here are documenting how they are attempting to properly follow both these rules.

²⁴¹ Yu's story is taken from many documents in the Shuntian prefecture archive (STF), including 28-1-59-134 (undated), 28-1-59-117 (DG 12), 28-1-58-104 (19/3/13), 28-1-59-146 (DG 29-4).

Confirming Yu's age was not an easy bureaucratic task: repeated stays of execution made more work for the magistrates in charge of prisoners, who were responsible for reporting on the original case details as well as the situation at the time of punishment. Letting criminals like Yu wait un-punished year after year, be it to allow them to properly discharge their family obligations or to allow the justice system to properly investigate their crimes, took money and manpower, money and manpower that would not be required by the swift execution of punishment.²⁴² This somewhat extreme example serves to illustrate that the calculus of sentencing was a complex one: processing criminals long after their initial crime required more work.

No one power was in charge of this calculus, so there is no one place to look to get a clear picture of the practice of processing delayed sentences. Local magistrates were in charge of the criminals themselves and yearly submitted reports that a criminal's circumstances had changed. Provincial officials confirmed investigations, consolidated paperwork and passed the reports from their inferiors to the proper superiors (again, on a yearly schedule). The central authorities were quite removed from the criminals themselves and the magistrates dealing with them, and thus encountered each criminal not as a human, but as a file of facts already processed that required oversight and management. The emperor himself encountered criminals in the most abstract way of any of these levels: as names in an index or in a summary. I list these authorities and their interaction with the criminals who faced commuted sentences here in order to again illustrate the breadth and scope of the practice of staying executions: this was a system that made a huge investment in the delay of sentences. In these stacked responsibilities we can again see how the disappearance of unnecessary data at every level made such an administratively heavy system feasible.

Along with that investment came a parallel investment in the reduction of sentences. I now move on to consider some examples of sentences which were reduced and dismissed at these various levels, answering in part the question of what happened to cases which were delayed.

Local Officials Doing All the Work: *liuyang*

Local officials were in charge of investigating and confirming the facts of any particular case, and at times they found that criminals were not, in fact, eligible for commutation. The extra review afforded cases by the constant possibility of commutation did not always change a case in the criminal's favor. Cases were dismissed as eligible for commutation at the local level, keeping them away from imperial attention entirely. The best illustration for the local decision to not commute sentences involves *liuyang*, or commutation of sentences so that criminals could perform familial duties.

For example, in response to a directive from Daoguang 19, Baodi county officials reported to the prefecture on a set of criminals originally sentenced to post-Review punishments. These criminals, despite the extra attention given them at this point, were found

²⁴² The observation that allowing criminals to wait instead of offing them is a far more expensive prospect is not a new concept for observers of the contemporary American justice system.

ineligible for commutation.²⁴³ This report contains detailed information on one criminal, Tang Shunying, who beat his wife to death and was sentenced to strangulation the previous year.²⁴⁴ This relatively new criminal's father was said to be dead and the officials at Baodi county along with a neighboring county were asked to investigate the situation as possibly warranting a mitigation of his death sentence.²⁴⁵ After an investigation, they concluded that he was not eligible for commutation.

The rest of the criminals in this tally sheet of unfortunates are in similar situations: all of them were sentenced to death in previous years and many of them have one or two dead parents. None of them, however, was found to be eligible for the commutation to care for their families. None of them are found eligible for transfer to a higher office for further investigation, either. This document catalogs and justifies the absence of further administrative action on the part of these 11 criminals, an absence of administrative action that would not be visible in case records or in the rolls of criminals granted or not granted leniency at a higher administrative level, but that shows the work generated for local officials by the extensive possibilities of commutation for all capital criminals.

This report should not be construed as the end of these criminals' stories, however: it is merely a snapshot of the middle of their journeys through the criminal justice system. To be investigated and not awarded commutation is not to be immediately punished. The first criminal on this list, and the only sentenced to the most serious punishment, decapitation, was eventually banished and made to pay a fine, after what we can only assume to be many more cycles of these investigations into family situations. Rather than recommending a particular course of action, this kind of report demonstrates to higher offices that the local officials were discharging their duty with respect to the commutation of sentences.

Whether it resulted in execution, a lesser punishment or release, each commutation meant more work for the local officials in charge of maintaining captives. Even prisoners eventually determined not to be eligible for commutation increased local officials' work load. Another murderer, Zhang Jiu, who threw a brick and killed a man, had no living parents, and thus may have been eligible for commutation as the head of a family. Zhang was not, however offered a commutation based on his family's status. It seems, from a short report written by the county officials, that Zhang's younger brother was deemed a sufficient substitute, and Zhang remained in jail to wait for his suspended sentence to be carried out.²⁴⁶

Though Zhang's commutation was not to be, his story illustrates the way that the very possibility of commutation occupied the staff of magistrates' offices the empire over: Zhang's family situation was most likely investigated by officials and their underlings at the county office.²⁴⁷ In order to report back that Zhang had a brother sufficient to carry out filial duties, at

²⁴³ STF 28-1-55-88 (DG 19/2).

²⁴⁴ Tang Shunying is listed in a document from DG 18/3 as a "new to be transferred for review prisoner." (STF 28-1-55-80 (DG 18/3)).

²⁴⁵ STF 28-1-55-95 (DG 19/2/11) ("investigate if Tang Shunying's father truly has died without a wife or anyone to do the sacrifices.")

²⁴⁶ STF 28-1-55-90 (DG 19/2/11).

²⁴⁷ This kind of report does prompt me to wonder if these criminals were investigated at all, or were just deemed unimportant enough to put off until something else prompted action on their case. Surely local officials prioritized their work load, and surely some magistrate somewhere

the very least that brother had to be located. At the most, an official would have had to go out and make contact with this brother, confirm that he was of sound body and bring him in for questioning. Either way, producing the updated case record that confirmed Zhang's eligibility for execution was a burden only on those representatives of the empire the farthest from the seat of power in Beijing.

Another criminal, Wei Yonghe, suffered the death of both his parents.²⁴⁸ We do not know from the short jail roll report on which he appears whether Wei received a reduced sentence or time to mourn, nor do we know when Wei was finally punished. But we do know that for each "old, not to be transferred" criminal, the class of criminals seemingly the simplest for officials to deal with, local officials had to document, investigate and confirm the death of parents, at least yearly if not more. The Review system required a large population of criminals wait in jail for decisions by higher authorities, while basing punishment on their status in any given year. These simultaneous requirements lean heavily upon nearly constant work from the investigators and reporters at the bottom.

That work was not always done satisfactorily. Registering the ages of relatives seems to have been a particularly difficult (or at least commonly bungled) part of the county magistrate's job. An order to the Baodi county officials in Daoguang 7 requested that, for prisoners waiting for imperial review, the ages of their relatives be registered and added to the case record.²⁴⁹ Collecting all the right information in the right places seems to have required some extra instructions so that when cases came up for review the facts not only of the crime but also of the criminal's family situation could be considered together.

Mitigation of Sentences: 'Deserving of Compassion' (*kejin*)

One way to approach cases that were reduced at different levels is through summary documents presented to the Board of Punishments by the provinces. In line with the reduction of information I have outlined in chapter two, these documents are more detailed than *huangce* but less so than *tiben*. The case summaries focus on the physical details of the crime, citing witness reports and the information gathered by the physical investigation. For example, in a report for Daoguang 8 for the province of Zhili, the entry for Wu Shaoqi, who killed his wife, consists primarily of a detailed description of the crime, including the victim's injuries. Wu's wife, nee Wang, died from wounds he inflicted on her left forehead, shoulder and eyelid.²⁵⁰

Wu Shaoqi was initially sentenced to strangulation after the Autumn Case Reviews. In this report his sentence, along with the other 15 criminals, was reduced. There is no information about why the provincial officials overruled the original sentence, however; the detailed description of his crime and the physical state of his battered wife is followed by the terse "Wu Shaoqi [s case] truly can be mitigated." His new punishment is issued in the end of the document, where all of these criminals initially sentenced to death by strangulation after

noticed as I have that this investigation, if not the report that followed, would be an easy corner to cut.

²⁴⁸ STF 28-1-55-120 (DG 20/2/10).

²⁴⁹ STF 28-1-55-44 (DG 7/2/21).

²⁵⁰ GSU 1610355 item 216-4, DG 8.

the Autumn Case Reviews are given the same reduced sentence: one hundred strokes of bamboo and 3000 li of banishment.

Sentences mitigated in this kind of a batch hint at the scale of the practice of the commutation of sentence; collecting many cases into one report was one data vanishing trick that allowed higher level officials to more efficiently process the large number of criminals that had been previously given stays of execution. Some, but not all of the criminals within this list had already been waiting for punishment for more than one year. Two criminals in particular, Zhang Rongfu and Li Deqing, had previously been given stays of execution (we have no way of knowing for how many years). This report changed their statuses to *kejin*,²⁵¹ mitigating their sentences, again with no explanation beyond a clear description of their crimes (both domestic homicide, like most of the criminals in this document). We also do not know when in their journey they were given stays of execution: they may have been in the Autumn Case Review system for one year or for seven. It is important to note here, however, that mitigated sentences were offered to criminals at many stages of the review process: both before and after stays of execution.

The lack of information on why these criminals escaped death by strangulation is not unexpected and made this system of commutation possible. Legal discussion was carried on elsewhere; presumably for these ordinary criminals at a lower level. If we could find local, provincial and central case records on the same case, we could determine the reason each particular criminal was offered a mitigated sentence. But from provincial reports we can only surmise that these criminals were given mitigated sentences and that the provincial officials suggested those sentences.

We can, however, look to this document to see the scale of this particular category of sentence mitigation. This document includes only criminals within the Autumn Case Review system for the province of Zhili. There are 16 criminals listed here total, which for one year for one province is a very small number; as a comparison, for Daoguang 3 in Zhili, the *huangce* list 254 cases.²⁵² Presumably criminals who were given sentences of direct execution were less likely to receive mitigations, as their crimes were more severe. This comparison indicates that, in Daoguang 8 at least, mitigating sentences through *kejin* was relatively uncommon.²⁵³ I think most sentences were reduced either at the local level or at the imperial level, rather than through this kind of provincial recommendation.

²⁵¹ *jin* carries many meanings in classical Chinese: arrogant, respect, solemn, honor, compassion, perilous, and I don't want to read too much into this fixed administrative term. Interestingly, though, it is the 'pity' or 'compassion' meaning that survived into modern Chinese. I've speculated, in the absence of any proper linguistic data or research, that the survival of the meaning most closely associated with the Qing's process of commutation indicates that this practice of the 'compassionate' mitigation of sentences was general knowledge among at least the more educated members of society.

²⁵² GSU 1357770 item 25 DG 3.

²⁵³ I was surprised to note that many of the criminals on these *kejin* documents were men who killed their wives while beating them: perhaps here we see in the practice of justice an unstated additional leniency for the accidental homicide of a wife in the course of 'normal' domestic violence. More research on the gender dynamics of homicide from the standpoint of final punishment (rather than case histories, which can not tell us whether or not a wife beater

Granting Leniency (*zhunqi kuanmian*)

Some sentences, after being assigned and entered into the Review system, were dismissed outright, rather than being commuted to some lesser punishment. To demonstrate this point, I will start by comparing two cases from the same year in the same province in order to illustrate the ways in which cases moved forward toward execution with their original punishment and, alternately, moved forward with reduced or dismissed punishment.

Summary documents within the Board of Punishments listed female criminals, divided first by whether or not their punishments were changed in the last year and second by province. These documents were lists and thus do not recapitulate all the information that would be in each case record, but for each case they do include short descriptions of the crime and punishment and brief justifications for the granting or not granting of leniency. Looking at a pair of these documents from Daoguang 3 allows us to compare two cases from the same province for the same year, one which was granted leniency and one which was not.

Both of these cases are from Guizhou. The first case featured two criminals, a mother and a daughter. Both Mrs. Wangs were involved in a complicated knife fight among family members and both were sentenced “according to the rule about killing in fights” to strangulation after the Autumn Review.²⁵⁴ Their case entered the Autumn Review in Daoguang 2, where it was given a stay of execution for reasons unstated in this summary report. In Daoguang 3 this case was revisited. Leniency was granted on the basis that this murder was an ‘unintentional killing,’ a crime officially punishable by death, but here seen as pardonable.

Even though their sentence was changed, we do not know what eventually happened to the Mrs. Wangs. The blurb about their fate simply ends “leniency granted.” I assume that the full case report would then be updated; if we could find that report we could confirm their reduced sentences. Clearly some further communication with the local authorities followed; as far as we know the Mrs. Wangs were alive and either jailed or restricted in their movement by the local magistrates. That documentation, too, would be nearly impossible to obtain. From this summary we only know that their crimes were deemed unintentional and thus appropriate for commutation.

Another criminal from Guizhou, Mrs. Fu, hit her husband on the back with a hoe, killing him. She was initially sentenced to direct execution by decapitation “according to the rule about killing husbands.”²⁵⁵ That sentence was revisited somewhere in the course of the regular review of all death penalties, and reduced to execution by decapitation after the Autumn Review. Her case then entered the Autumn Reviews in Daoguang 3. This summary document offers no reasoning for that prior change in sentence. The final line in the entry about Mrs. Fu, however, defines her crime as “one of the ten great evils” and thus her case is not granted the leniency that was afforded the Mrs. Wangs. Though Mrs. Fu’s sentence was

was eventually punished, or written law, which can not tell us how those laws were enforced) might yield telling results.

²⁵⁴ LFZZ 3711-25.

²⁵⁵ LFZZ 3711-26.

previously decreased from one capital punishment to another, here that mitigation of sentence does not even allow her to die with her head attached to her body.²⁵⁶

We don't know, for either of these cases, why they were considered for leniency. The brief explanations throughout this document follow the pattern outlined here: some murders were deemed to be accidental, and thus eligible for commutation, and some crimes are just so heinous that commutation (or further commutation) would be impossible. The narration of the crime on this brief listing document leaves no room for interpretation: unintentional killings are written so that it is clear that they deserve leniency and the crimes not granted leniency tend to fall under unassailable rubrics; killing one's husband is clearly not to be tolerated under Confucian law.

But despite our inability to penetrate this clean narration to whatever process of reasoning lay behind these decisions, this pair of cases serves to illustrate that the dismissal of punishments was an expected part of the judicial process, one that often took several years. This list does not mention the dates of the crimes, but we can infer that the Mrs. Wangs committed their crimes at least one year (probably more) before Daoguang 2, as their case has already been given a stay of execution. Mrs. Fu's crime may have occurred in Daoguang 3, but clearly her punishment did not, as her case was re-directed to the Autumn Review cycle for that year. The case timelines for the other female criminals on this list are similarly vague: the dates of the crimes are not part of the report recapitulated on this short list. Other criminals on this list have also been granted stays of execution previously, some quite a long time before, as for a Ms. Yang who entered into the Autumn Review in Jiaqing 25.²⁵⁷ We know that leniency was both granted and not granted, but we do not know when in the process that occurred. This list offers only a snapshot of commutation at the moment that this particular decision was articulated: a moment at which some capital criminals were released and some retained according to some hidden calculus of benevolence and justice.

We also do not know precisely what followed these orders. The 30 criminals granted leniency here presumably were allowed to walk free. But the 13 who remained in the justice system were not necessarily executed at the next possible chance. After this unequivocal statement of their guilt, further reviews of their cases based on the facts of their crimes were unlikely to yield release. But if they managed to benefit from a general amnesty, or something allowed them more stays of execution (a local magistrate falling behind on his case reports, say) and they stayed in the system long enough, perhaps their sentences would be reduced based on their ages or family situations. Maybe they died in prison before their punishments were executed. Without the documents that followed these pronouncements of final sentences, we can not assume that we know the next step in their path to (or away from) punishment.

Though we would not want to use lists like this one to count the number of executions actually carried out, we can use these summaries to make some quantitative estimates about the practice of granting leniency. We're looking at female criminals only, which is generally a small portion of criminals in the justice system and a class of criminals who may have been granted commutation in this way at a higher rate (or lower, for that matter). But for every

²⁵⁶ Like the Mrs. Wangs, we do not know from this report if or when Mrs. Fu was actually decapitated. To determine her actual fate we would need to locate their names on the rolls of executed criminals (*jueguo renfan*) for some year—any year within her lifespan—after DG 3.

²⁵⁷ LFZZ 3711-25.

province in Daoguang 3, there were 30 cases granted leniency and 13 for whom the request for leniency was denied. The scale here is quite small (43 criminals out of a whole empire of domestic violence and adultery), but certainly tipped towards leniency. It seems a case had a better chance of being commuted once it made it to this round of discussion; perhaps many other cases were kept out of consideration at lower levels. While, as we have seen, stays of execution were common, the number of criminals on these particular rolls is very small. It seems that having a case put off for one year or many did not ensure that that case would be dismissed.

Nor did being considered for sentence commutation ensure that a case would travel the same way in the system; some sentences were first increased and then decreased. Within the 30 women granted leniency is the case of a Mrs. Tang, who was originally sentenced to strangulation after the Autumn Review for illicit sex with a relative of her husband's.²⁵⁸ The case was stayed at some point, after which it was suggested that her crime actually merited direct strangulation, without the benefit of the Autumn Reviews. In this document, however, her crime is declared "unintentional" and she is granted leniency. By focusing entirely on the commutation of sentences here, I do not want to give the impression that the Qing justice system always began with the harshest sentence and moved down. Rather, sentences were not fixed: criminals could be released or commuted at the time the proper authority deemed it appropriate or advantageous to do so.

Conclusion: The Potential Consequences of Commutation by Delay

Investigations into criminals' backgrounds clearly meant a good amount of work for local as well as provincial and central officials. For magistrates that work would have increased with every criminal offered a stay of execution. Provincial officials faced the challenge of stripping down cases to essential details and deciding or reporting on them. Board of Punishment officials, likewise, had to streamline the constant information produced by criminals waiting year after year for punishment.

I started my discussion of the practice of commuting sentences by looking at the way that cases offered three or more stays of execution were differently administered as evidence that stays of execution were a common occurrence. I want to revisit this issue here to consider a moment in the Daoguang reign where it appears that cases which were put off had become so common that their administration had to change again to handle the heavy load.²⁵⁹

²⁵⁸ LFZZ 3711-25.

²⁵⁹ I do not have specific numbers comparing the beginning and end of the dynasty in terms of cases given stays of execution. James Lee estimated the cases commuted as a percentage of capital crimes between the years 1760 and 1903; for the years he found data those numbers hover between 2 and 8 percent. As I have mentioned previously, I have trouble following Lee's methodology, but in any case his estimates put commutation as a percentage of total cases as a consistently low number. I do believe jails to have been more overloaded in the nineteenth century in comparison to the centuries before, and I believe one early part of the Qing's response to a new over population of criminals was to expedite both the execution of

A directive written in Daoguang 19 to the officials at Baodi Xian outlines a concern the superior office had with the county's record keeping: "Look up and organize... all the old Autumn Review cases given stays of execution, and every criminal [within that category] who require reduced sentences to do sacrifices [for mourning]." ²⁶⁰ This short document, even out of the context of a specific case, suggests that superior officials found something awry in Baodi xian's reporting in Daoguang 19. Without more information, however, we don't know if this was a problem particular to this county or part of an empire-wide push to process criminals who had been given repeated stays of execution. Still, we do know that in Daoguang 19, the organization and number of criminals whose cases had already been prepared, and who had previously received stays of execution troubled higher officials.

I believe that this directive to organize and report on waiting criminals who might be eligible for commutation was part of a new attention in the Daoguang period to the number of criminals waiting for punishment. ²⁶¹ In both local administrative documents like this one and individual case records, during the Daoguang period I see notable concern both with the amount of time officials took to prepare cases and the number of criminals who have been given repeated stays of execution. Sometime in this period the result of increased stays of executions and the number of criminals waiting for punishment could no longer be ignored, and it fell to the local officials to better organize these cases for review and potential reduction of sentence.

Supporting this assertion (and suggesting that the compounding criminal population was an empire-wide issue) is an imperial edict from Daoguang 28 which addressed the administration of those cases that had been delayed three times or more. This edict required an investigation from the Board of Punishments and more yearly reports from lower level officials, in an attempt to keep these cases from falling through the cracks. Most tellingly, this edict claims that criminals entering the Autumn Review that had already received stays of execution numbered 10,500, ²⁶² a large number considering that these are only cases to be stayed, not new cases that might be stayed or old cases that were to be executed.

It can appear from these documents that nothing was going right by the Daoguang era. Lower level officials were of course not the people in charge of finishing these cases: in this as in other things administrative the most visible result of this edict is not less paperwork, but more, as the local officials scrambled to both cite this edict on every communication and more properly document the criminals in their care. Local documents are always skewed toward

sentences and the commutation of sentences. James Lee, "Homicide et peine capitale" Tableau 1, 119-120.

²⁶⁰ STF 55-87 (DG 19).

²⁶¹ I also made this assertion in chapter four: the documents from Shuntian prefecture for Daoguang repeatedly evince a concern for the more efficient organization and processing of Case Review criminals.

²⁶² SYD 1454, p 456, DG 28-12-17: "The criminals in the Autumn and Court Review [systems] who have been given stays of execution three or more times are numerous... Have the Board of Punishments investigate and memorialize. Split [these cases] into two categories: those to be reduced and those to wait. ... After DG26 an investigation found that those entering *huanjue* in this year's Autumn Case Review number 10,500 people. The Board of Punishments has already offered [these cases] stays of execution three times or more..."

demonstrating the proper response to imperial corrections to local administrative errors; as local archives house documents that ended at these lower units, they tend to describe more fully the ways in which superiors required change than the ways in which the system functioned normally or responded to these directives for change.

Still, these changes suggest an empire continuing to invest in the performance of leniency. Though the specific bureaucratic processes documented here were not immediately apparent to the general public, that some ordinary criminals were granted reduced sentences or pardoned completely was common knowledge, and more importantly, the bureaucracy self-corrected to retain those processes, that investment. Clearly the Qing valued commutation throughout this process as part of the performance of proper punishment; otherwise this investment would not have continued.

But that investment only paid off up to a point: as the nineteenth century went on, these layers of extra administrative requirements built up. At some point in the end of the nineteenth century, as rebellions and challenges from the West compounded the criminal population, the Qing abandoned these attempts to clarify the administration of stayed and reduced punishments in the favor of a radical change: the injunction that all capital cases be seen by the emperor before execution was effectively canceled, leaving local officials to execute large groups of rebels first and report later.²⁶³ And thus, in the mid nineteenth century, 200 years of investment in *not* executing capital criminals was amended in the face of turmoil: for whatever reason the investment I have outlined here ceased to offer the returns that made it worthwhile.

Did this late nineteenth century moment represent the failure of the Qing's investment in performing benevolence as well as power? The narrative of the decline of the Qing empire has often been one of failure: either of the failure of a pre-modern empire or the failure of the East in the face of the West, or as one early chapter in the world wide twentieth century failure of colonial projects. Chinese punishment has played an important role in these discussions of failure: punishment has been an example of backwards cruelty, or the unsustainable nature of Oriental despotism, or the inability of a large empire to control its population. As I have demonstrated here, considering the ways people were not punished rather than just the punishments themselves absent their administrative and historical context rewrites the history of the failure of the Qing empire, suggesting instead that any failure within the capital punishment system occurred after a long attempt to support the structures of benevolence in which the empire had made large investments.

I do not believe that failure to be all-inclusive: though the legal system in the end of the Qing was debated and amended, the Case Review system remained an important part of the discussion surrounding the reform of the legal system going into the twentieth century. Notably, legal reformers couched that importance in terms of performance: despite the chaos

²⁶³ This change, to the so-called *jiu difang fa*, or execution in place, is debated by Chinese scholars. One school locates this change in the aftermath of the Taiping rebellion, and another suggests that this rule had existed but had previously been used sparingly. The general consensus, however, is that by the end of the nineteenth century in the face of large rebellions magistrates could execute first and report later. For more on the *jiu difang fa* see Sun Jiahong, *Sixing Jianhou*, Wang Ruicheng, "Jiu difang fa yu qingdai xingshi shenpai zhidu," Li Guilian, "Wanqing 'jiu difang fa kao.'"

of the end of the Qing, Case Review continued to be the place to show proper benevolence. In a discussion of potential reforms, the Ministry of Justice made it clear that Case Review may have been too complex, but was still the proper place to enact compassion:

This Ministry (considers that) as far as offenders to be treated with compassion at the Autumn Assizes are concerned ...when we compare the category of those to be treated with compassion with that of those whose execution is to be delayed, the limits are extremely severely traced. Unless we give careful consideration to each case when it occurs, we shall lack in display of equity and mercy, and injustice and undue leniency can scarcely be avoided.²⁶⁴

Mercy is essential and leniency can go too far. The key is in striking a balance, and, the Ministry of Justice concluded, a properly operating Review system is the optimal way to strike that balance.

Imperial Chinese justice was not blind. Assigning a proper punishment depended on many things: the crime, the criminal's status, even (as in the case of amnesties) the day of the week. Taking these ideal requirements seriously, as well as considering the way that punishments were actually settled upon in practice, suggests that the Qing justice system was, at least in part, just that: a system of justice rather than simply an empty display of imperial power.²⁶⁵ When we consider the commutation of sentences as an essential part of capital punishment under the Qing, we see that the Qing performed imperial power not only by dramatically ending the lives of captives but also by using those captives to show its highly bureaucratized processes of benevolence.

I began this chapter citing a set of criminals punished for one particular crime. Some of them were brutally and publicly punished, while some of them were excused with lesser punishments. We have no way of knowing which of these performances of power made more of an impact on potential criminals: we can not compare the deterrent effect of a disembodied head to the good will effect of a criminal released with a beating. But we can say with certainty that throughout the Qing the commutation of sentences was a widespread practice, one that was worth preserving even as it got more difficult to administer. Should we ignore the many paths that criminals took away from the execution ground we would miss an important part of a definition of justice that was neither irrational nor empty.

Western observers contemporary to Qing often failed to see those paths. In concluding I turn now to those observers.

²⁶⁴ Ministry of Justice memorial, translated in M. J. Meijer, *The Introduction of Modern Criminal Law in China*, (Batavia: De Unie, 1950) 180.

²⁶⁵ The idea that the commutation of sentences was merely an meaningless routine is an old one: in 1899 Alabaster dismissed the empire's interest in performing leniency as formerly political but currently empty: "In addition also to certain fixed and definite reasons for commutation and mitigation, there must likewise be mentioned the Acts of Grace passed from time to time commuting and mitigating penalties: the cause of this, now a regular practice without other motive, was probably originally political expediency to gain popularity" (Alabaster *Notes and Commentaries*, 84.)

Chapter 6. Epilogue: Western Observers, Qing Justice

Mrs. Archibald Little did not witness a *lingchi* execution in Beijing in 1904. Neither did her friend, a man whom she quotes at length in the beginning of the twentieth chapter of *Around My Peking Garden*.²⁶⁶ His friend, described only as “a European,” saw one, though, and reported “that it was a most tragic spectacle; the prescribed process was literally carried out, the pieces of flesh, as cut away, being thrown to the crowd, who scrambled for the dreadful relics. In China we are still in the Middle Ages.”²⁶⁷ This second-hand assessment of a third-hand story, that China in 1904 was commensurate to the European Middle Ages, was a common response of Westerners to Chinese punishment in the early twentieth century.

This horrified, anachronistic and dismissive reaction to a gruesome punishment may have been common among Mrs. Little’s peers (and for that matter, among mine). But behind this seemingly simple reaction is a hundred years of changing popular perceptions of Chinese punishment. In one anachronism Mrs. Little’s friend makes invisible both the cultural context for this execution (by equating China with Europe) and the justice system behind this punishment (by equating it with barbarism). Western visitors have been commenting on and judging Chinese justice since the beginning of European-Asian contact, and the tone of those comments has often been self-serving. But beyond noting these seemingly universal truths of cross-cultural observation, Mrs. Little’s report demonstrates how Western understanding of Chinese punishment has over time replaced an understanding of process with reports of gruesome spectacle. The nineteenth century, which began in the aftermath of the Macartney Embassy and ended with chaos of the Boxer uprising, opened new avenues for popular reflection in the West on China in general, reflections which have influenced and continue to influence both popular and scholarly images of justice and punishment in the Qing.²⁶⁸

How did Chinese law become synonymous with spectacular capital punishment in the Western mind? The goal of this study of the administration of execution has been to turn away from the spectacular aftermath of execution towards the workings of the system that brought those executions to the stage. I have looked at a variety of topics which detail the

²⁶⁶ This “friend” appears to be Archibald Little, as this description is repeated from Archibald Little, *Gleanings from Fifty Years in China* (London: Sampson Low, Marston and Co., 1910) 106.

²⁶⁷ Mrs. Archibald Little, *Round About My Peking Garden* (London: T. Fisher Unwin, 1905) 244-5.

²⁶⁸ Jerome Bourgon has previously made the point that Western (mis-)understandings of Chinese punishment were heavily influenced by photographs of particular executions. Bourgon draws attention to European contexts and expectations for execution and torture. He points out that Chinese and Christian meanings of public punishment varied so widely that the eventual conclusion that Chinese character was fundamentally flawed was based on a grand cultural misunderstanding. My point is not dissimilar, but I am interested in outlining how popular Western understandings of the legal administration of Qing punishment waned as popular disgust with the punishments themselves waxed. Jerome Bourgon, “Chinese executions: Visualising their differences with “Supplices” of Christian Europe,” *European Journal of East Asian Studies*, 2, no. 1 (2003): 153-184.

paths toward and away from capital punishment within the Qing's uniquely administered Case Review system. As I have considered the way that all of these topics (the administration of Case Review, the routine transfer of criminals, the death in jail of captives, the commutation of sentences) are represented in official documents I have repeatedly found that the Case Review system actively concealed and communicated the daily workings of justice. The contrast between a judicial system concerned with performing both benevolence and power and Mrs. Little's blithe failure to acknowledge those performances motivates this epilogue: here I turn back to try to understand the way that this particular Western ignorance of Qing administrative and legal processes came to be.

In this concluding chapter I will look to three representative sets of popular Western depictions of imperial China to outline a nineteenth century trajectory of the dismissal of the Chinese administration of punishment. I contend that popular Western understandings of Chinese punishment in the nineteenth century progressed toward a disappearance of the various contexts for punishment, a lacuna that resulted in the narration of failure, effectively proscribing the possibility for Chinese law to handle the challenges of the twentieth century. This trajectory moved from the clinical representation of punishments against a white background to imagining those punishments as illustrative of Chinese character flaws to, finally, photographs of Chinese punishments that claimed the undeniable failure of that culture.

By appending the Western popular depiction of Chinese punishment and law to a study about the performance of justice in the Qing I argue that the audience for the performance of Qing justice extended beyond the officials and commoners for whom it was immediately meant: by the dawn of the twentieth century executions in China attracted much wider attention. The trajectory of that attention was, perhaps, unfortunate: to Western observers, the (imagined) administrative structures of Chinese justice behind executions began the nineteenth century as a barely visible but integral part of an effective but cruel administration of punishment. Those same structures began the twentieth century entirely upstaged by the kind of 'tragic spectacles' Mrs. Little did not witness. This trajectory undergirded colonialist rhetoric about modernizing China as it diminished Western understanding of imperial law and bureaucracy, an understanding that might have allowed sensitive observers to see Chinese justice as something other than backwards, cruel and arbitrary.

I have split this narrative into three chronological parts, each represented by a different genre of popular depictions of China for European and American audiences. These three genres move from imaginary (drawings) to descriptive (travel narratives) to naked reflections of reality (photographs). Technological change in printing is partially responsible for this progression: in 1800 books were printed with color illustrations, mid-century photographs became possible in small amounts, and by 1900 cameras were portable and accessible. Technological and political change in travel are also partially responsible: in 1800 few Westerners lived and traveled in China, mid-century there were more travelers from Europe and America in Asia, and by 1900 the Western presence in China included not only travelers, merchants and missionaries but occupying troops. The China these different Westerners saw was understandably different, and so too was the China they reported back to their countrymen.

Early Reports: Mason's *The Punishments of China*

In Europe at the beginning of the nineteenth century books on China were not rare. Earl Macartney's embassy had recently initiated official contact between England and the Qing empire, and a number of books for a general audience were published by men associated with this grand diplomatic mission. In 1801 George Mason, a British major stationed in Madras, offered readers of French and English the opportunity to expand their own knowledge of China by reading his new illustrated book, *The Punishments of China*. Europeans perusing this publication were treated to twenty-two color illustrations of Chinese criminals and officials engaged in various acts associated with corporeal punishment.

The Punishments of China details in prose and illustrations the ways in which corporeal punishments were carried out in China in the end of the eighteenth century. Punishments illustrated include "twisting a Man's ears," the "Punishment of the Swing," and "The Rack." Each portrait is accompanied by a written description of the information included in the illustration ("from the top of the bar, there depends a little board, upon which the name and crime of the malefactor are inscribed"²⁶⁹) and additional information about the crimes for which the punishment is decreed ("It is frequently inflicted as a punishment upon disorderly women"²⁷⁰). In addition to illustrations of punishments themselves, Mason includes public scenes associated with punishment, such as "A Culpit conducted to Trial," and "A Malefactor conducted to Execution."²⁷¹

We do not know the extent to which Mason may have witnessed torture and executions while briefly in China on sick leave. Mason's illustrations are believed to have been based primarily on a Cantonese artist's watercolors, so it is possible, even probable, that he did not witness any of the scenes in the book.²⁷² We do know that Mason's expensive, high quality color books were popular enough to go through several printings and that they were marketed for an international audience.²⁷³ Clearly there was a demand in Europe for information on Chinese customs generally and punishment specifically.²⁷⁴ Thanks to books like Mason's, in the beginning of the nineteenth century learned Europeans could meditate on the (imagined) experience of Chinese justice in their drawing rooms and libraries. As early as six years after the Macartney embassy, punishment in China had a larger audience (in both number and geographical distribution) than simply the immediate crowd pushing to get a glimpse of the condemned.

Mason's illustrations of punishment entirely lack images of that crowd: each plate shows only the convict and the official enacting the punishment against a white background.

²⁶⁹ George Henry Mason, *The Punishments of China, Illustrated by Twenty-Two Engravings: with Explanations in English and French* (London: W. Bulmer and Co, 1801) plate 12.

²⁷⁰ Mason, *The Punishments of China*, plate 10.

²⁷¹ Mason, *The Punishments of China*, table of contents.

²⁷² Brook, et. al., *Death by a Thousand Cuts*, 171 and notes.

²⁷³ The entirety of *The Punishments of China* is in English and French: it even includes both English and French cover pages.

²⁷⁴ Mason's books are particularly expensive affairs: color prints every other page, high quality binding, etc. The quality of these books serves as a reminder that Europeans interested in Chinese culture were not only literate, but also had income to spend on beautiful books.

Though Mason attends to details such as the characters written on the victim's signboards, background, both architectural and human, is entirely absent. This clinical presentation leaves the reader with a detailed understanding of the specific instruments and practices of corporal punishment but a total lack of visual information on the world in which they were carried out: Mason helpfully eliminated China from *The Punishments of China*. It is clearly unreasonable to expect that Mason, a second-hand observer presenting himself as an expert, understood the entire judicial procedure leading up to punishment, but here he has visually removed everything, even the immediate background.

Mason focuses instead on a different kind of background. In the magisterial text explaining each engraving Mason offers his readers important facts about Chinese culture and justice. Some of these facts articulate parts of the judicial process not evident in the color engravings:

The Emperor of China seldom orders a subject to be executed, until he has consulted with his first law officers, whether he can avoid it, without infringing on the constitution of his realm. He fasts for a certain period, previous to signing an order for an execution; and his Imperial Majesty esteems those years of his reign the most illustrious and most fortunate, in which he has had the least occasion to let fall upon his subjects the rigorous sword of justice.²⁷⁵

By lauding the emperor's restraint Mason offers the Qing judicial apparatus an unexpected compliment at the same time that he connects an arresting image of execution to a larger judicial process. Though this process is imagined to be simply focused on the person of the emperor, it is at least made visible. Mason's description of the emperor's connection to capital punishments presages the kind of understandings of review rituals that contemporary scholars of Qing law have inherited from our early twentieth century predecessors (as outlined in chapter one). As we will see, even this brief articulation of administrative process does not occur later in the century in popular depictions of punishments.

Not all of Mason's anecdotes about the administration of justice are so laudatory. Mason asserts that in China "a person's innocence is ... estimated by his mental or corporeal powers of enduring pain," appealing to a common notion that torture is an essential part of the Qing sentencing process. Perhaps based on this belief that the Qing justice system relies on torture, he calls China a place "where tyranny, fanaticism, or anarchy... exercise their demoniacal propensities for cruelty."²⁷⁶ These generalizations present an impression of the administration of punishment in China seemingly opposite to the image of the emperor as reluctant judge, yet both characterizations exist simultaneously in Mason's text. For Mason the Chinese judicial system is capable of both cruelty and benevolence.

Though Mason manages to simultaneously laud the Qing administration and claim that the justice system is based on an abhorrent belief in the connection between pain and innocence, the images of punishment take center stage in *The Punishments of China*. Mason's removal of punishment from the urban environment and the crowds that presumably witnessed it first hand further focuses the reader on the physical acts depicted. In other words, despite Mason's tidbits of information about the judicial system, abstracted acts of cruelty are

²⁷⁵ Mason, *The Punishments of China* plate 22.

²⁷⁶ Mason, *The Punishments of China* preface.

more evident than both benevolence and the concrete experience of punishment in Qing China.

While Mason doesn't mention the lack of China in *The Punishments of China*, he does directly address his motivations for the inclusion and exclusion of material. According to its introduction, *The Punishments of China* differs from other publications on Chinese punishment in its restraint:

Various writers have mentioned other punishments, in addition to those represented in this publication, of a much severer nature, which have been inflicted by the Chinese upon criminals, convicted of regicide, parricide, rebellion, treason, or sedition; but drawings, or even verbal descriptions, of these would be committing an indecorous violence on the feelings.²⁷⁷

While avoiding the “violence on the feelings” of Europeans which would naturally occur from the depiction of truly violent acts of punishment,²⁷⁸ Mason manages here to be demure while subtly reminding his readers that some of China's punishments are disproportionate to the crime.

Mason claims he avoids sensationalism in an attempt to retain his readers' neutral responses toward the Chinese government. Mason worries that portraits of such violent acts would induce “us to arraign the temperance and wisdom so universally acknowledged in the government of China.”²⁷⁹ This statement sets Mason's account apart from the popular representations of the ensuing years: *The Punishments of China*, a clinical depiction of some of the punishments used later by both Chinese and Western observers to question the Qing legal system and by more aggressive entities to justify Western intervention was, allegedly, *not* a document meant to condemn the Qing. This was rather a book which aimed to offer a European audience a more complete picture of the cruel, but wise, imperial Chinese government. Mason's strange book, in other words, demonstrated of both the essential cruelty and essential effectiveness of Qing law.

In this way, Mason's tome illustrates a transitional moment. In 1801, before the nineteenth and twentieth century movement away from the public death penalty had gathered momentum, Western observers of Chinese punishment took those punishments as proof that the vast empire to the East was effectively governing a less civilized population. Though Mason eliminated the physical background, his text (and some of his illustrations)²⁸⁰ detail other parts of the background for punishment: the emperor's benevolence, the imagined cultural attachment to torture, the cultural norms punishments enforce. Thus, Mason made certain elements of the administration of punishment visible while making the urban context invisible. In the later part of the nineteenth century, travelers' accounts approached imperial Chinese punishment differently: they tended to be concerned with the very city scenes that

²⁷⁷ Mason, *The Punishments of China*, preface.

²⁷⁸ I believe the unmentionable punishment to which Mason refers here is *lingchi* (‘death by slicing’ as Mason would have known it). This execution method was particularly well documented by later Westerners interested in China as investigated in Brook, et al, *Death by a Thousand Cuts*.

²⁷⁹ Mason, *The Punishments of China*, preface.

²⁸⁰ Trial, transfer, etc.

Mason excised, often to make conclusions not dissimilar to Mason's. It is to these observations that I now turn.

“Prisons, executions, and excursions in China:”²⁸¹ Nineteenth Century Travel Accounts

Later nineteenth century Western travelers saw more of China than Mason did. Travelogues were written by all manner of travelers, but the majority of people who could afford to spend months traversing a foreign continent in the nineteenth century and then come home and write about it were people in positions of privilege. There are some important differences between Mason's work and these travel narratives: first, though photographs became a standard part of the travelogue in the nineteenth century, the travelers I discuss primarily use text to convey their observations. The personal tone of first person narration likewise differs from Mason's magisterial explanations. Though these well-off Europeans and Americans spent more time in China and had more information than Mason, they too tended to characterize the Qing government as backward but strong and even as required to control a large culturally deficient population. Writers of the travel accounts in question, however, tended to see evidence of the philosophy and effectiveness of imperial administration in the urban landscape, the very background that Mason left out. While focusing in on these sites, however, travel writers turned away from the justice system as a whole; city life, not the emperor was their concern. Two urban sites in particular repeatedly populate travel accounts and serve as evidence of the unsettling but necessary nature of harsh punishment in urban China: execution grounds and prisons.

The Execution Ground

In the nineteenth century, the execution ground was a standard stop in the Westerner's visit to southern China. In these narratives travelers evince a smug horror at the casual nature of executions, even though few authors actually witnessed one.²⁸² Highlighting the execution grounds themselves allows these travelers to convey the difference between practices in China and those at home in a way which expresses admiration for ancient systems of control, but reviles what they see as an ingrained lack of respect for human life in China.

Andrew Carnegie was unwittingly led to the site of executions by a guide who “startled us with the information that we were in the execution grounds.” Carnegie narrates the scene around him with gory details presumably given to him by his guide: the guide “pointed out spots still damp with the blood of criminals, ...and a rude cross still remaining upon which a woman had recently been crucified and cut to pieces while alive.”²⁸³ But Carnegie seems to find the many uses of the space to be a more perplexing fact than that of the execution itself: “Instead of this spot being set apart and shunned by man, woman, and

²⁸¹E. Warren Clark, *From Hong-Kong to the Himalays: or, Three Thousand miles Through India* (New York: American Tract Society, 1880), 53.

²⁸² Rumor is a repeated element in both the popular depiction of Chinese punishment and the scholarly depiction that developed in the twentieth century.

²⁸³Andrew Carnegie, *Notes of a Trip Round the World* (New York: 1880), 82.

child, as defined by the horrors enacted within its walls, the area was filled with large clay jars, used as stoves, the product of a manufactory adjoining...there is nothing without its use in China.”²⁸⁴ The most compelling facet Carnegie relays of his trip to the execution grounds was not the fact of violent death itself, but the lack of physical segregation in this space between the activities of daily life and the execution of convicts.

The perception lurking behind this observation, that China was filled with masses of faceless people forced into a small urban space, was a common cliché in the nineteenth century, as it is now. Warren Clark also visited Canton’s execution grounds and makes a similar note of the many uses of the place: “There is a pottery warehouse at the side of the grounds, and when the executions are completed, potters continue their work, and fill up the space with their freshly-made ware.”²⁸⁵ Clark does not attribute this use of space to a Chinese idiosyncrasy, instead he notes the density of Canton’s urban landscape, a fact of Chinese urban life which Carnegie hinted at. According to Clark the execution ground “is located in the midst of the new city, with a dense population about it. The open space is not fifty yards long, and is eight yards wide at one end, and less than five at the other.” Clark goes on to remind his readers of the extreme violence which occurs on this patch of ground: “this miserable patch of earth has soaked up the blood of more victims than any spot of equal size the world over.”²⁸⁶ For Clark, the (imagined) volume of executions sets the Chinese apart from the rest of the world: he treats the sheer number of deaths with a kind of horrified reverence.

These travelers interpret the urban landscape for their readers by moving from sheer population numbers to the volume of executions. This interpretation is entirely based on traces left on the urban environment rather than first hand observations. While these travelers and others like them, unlike Mason, find evidence for the practice of Chinese justice in the city itself, punishment, the very topic of their observations, has disappeared. Writing about the traces of punishment, but not witnessing it, allowed these amateur observers to circulate two perceptions of Qing justice in Europe and America: first that executions were carried out clinically in a multi-use public space, and second that the Chinese government maintained control over a huge populace by executing large numbers of them. Though, eighty years before, Mason eliminated the backdrop, focusing only on the act of punishment, these writers made their conclusions about the punishments of China based on only that backdrop. But like Mason, these travelers found evidence of a primitive but effective Chinese death penalty. Put differently, instead of reporting the details of punishment (both the act itself and the process leading up to it), travelers reported the necessity of autocratic power in China along with rumors about its spectacular performance.

Prisons and Punishment

²⁸⁴ Carnegie, *Notes*, 83.

²⁸⁵ Clark, *From Hong-Kong*, 63.

²⁸⁶ Clark, *From Hong-Kong*, 61.

Prisons were another standard stop on the traveler's itinerary. Visitors to Canton tended to travel to jails as well as to the execution ground.²⁸⁷ Two aspects of their visits to prisons interested American travelers most: first the crimes for which the prisoners were being held and second the use of torture in the sentencing process.

Travelers commonly observed that Chinese people were punished for acts which would not be considered crimes at home. In the second half of the nineteenth century the Qing government dealt with a plethora of rebellions; the Taiping movement is cited more than once as the crime for which prisoners are held. Though attitudes on the Taiping rebellion itself varied,²⁸⁸ American travelers agreed that holding prisoners for associating with rebels constituted barbarism. Clark visited a woman in prison who was

a relative of the chief in the Tai-Ping rebellion, and solely for this reason she and her family were seized and thrown into prison, though none of them were engaged in the rebellion itself. For twenty years she has lingered in the dreary hole in which we saw her; her son also was in a neighboring prison, and there was little hope that either of them would ever get out.²⁸⁹

Francis Tiffany similarly notes "one poor woman enduring a ten years' sentence" for a murder her son committed, "Because she did not give him better advice." Tiffany considers this punishment outrageously backward and concludes that "This seemed to me the patriarchal system of China with a vengeance."²⁹⁰

Tiffany's understanding of that particular criminal's sentence was most likely corrupt: when he traveled to China confinement was not generally used as a punishment.²⁹¹ This kind of extrapolation from a misunderstanding to a cultural deficiency of the entire legal system is common in accounts like this one. Also familiar is Tiffany's conclusion: punishment in China is out of proportion because Chinese traditional beliefs are misguided or misinterpreted. Carnegie makes a similar point; the woman whom he believes to have been "crucified and cut to pieces while alive" suffered because "Her crime was the gravest known to Chinese law; she had murdered her husband."²⁹² Like Clark and Tiffany Carnegie represents Chinese law as mistakenly obsessed with the enforcement of familial relations. By adding information (however gleaned) about the crimes being punished to their description of their encounters

²⁸⁷ Punishment in general is a standard element of travel narratives: interacting with criminals being publicly submitted to the cangue seems to have been a particular treat that was more easily achieved than witnessing an execution. Allen and Sachtleben cite their interaction with criminals dead and alive with both words and photographs; the photograph of one of them "practicing our Chinese on a kuldja culprit" (Allen, *Across Asia*, 160-161) is particularly bizarre: the prisoner seems to be smiling from under his wooden collar and flashing a peace sign at the camera.

²⁸⁸ The extent to which Christianity inspired the Taiping movement was naturally the cause for interest and debate in the last quarter of the nineteenth century.

²⁸⁹ Clark, *From Hong-Kong*, 60.

²⁹⁰ Francis Tiffany, *This Goodly Frame the Earth* (Boston: Houghton, Mifflin and Company, 1896) 121.

²⁹¹ He may have encountered someone who was sentenced to 10 years of labor, or 10 years of banishment, however.

²⁹² Carnegie, *Notes* 82.

with these women being punished, these travelers reach beyond the act of punishment itself to ridicule the laws upon which these punishments are based.

The three examples of prisoners cited above are women. I do not believe the gender element to be coincidental; Clark, Carnegie and Tiffany chose to highlight for their readers female prisoners and their fates as the most grim, foreign and fascinating examples they could summon. These anecdotes were meant to shock American readers because of the crimes committed, the punishments received, and the fact that women are the perpetrators (or rather victims of an outdated regime). Chinese culture is both blamed and perversely admired for its stubborn (but effective) adherence to a tradition which imprisoned people for their familial relations and punished women based on these backwards notions of family norms. Nineteenth century American readers learned from these accounts that the Chinese consideration of women and human life in general was distinct from their own. Readers of these travel accounts learned not only about punishments themselves (as readers half a century before did through Mason's illustrations), but about how Chinese law was disturbingly behind Western law.

Tours to the prison in Canton also seem to have included a description of common methods of torture. Warren Clark echoes Mason when he describes instruments of torture and explains their use in a direct comparison to the American legal system: "In Chinese law, the accused is presumed to be guilty unless he can prove his innocence; this is just the contrary to our ideas of law, in which a man is treated as innocent until he is proved guilty. No criminal can be condemned, however, until he *confesses* his crime. . . .torture is therefore employed to help his judges in the matter." Clark follows his legal analysis with a cultural explanation: "Truthfulness is not a very prominent element in the Chinese character."²⁹³ These two statements justify each other: the deficient Oriental mind requires the outdated excesses of not only punishment, but the imagined cruel administration of that punishment.²⁹⁴

²⁹³ Clark, *From Hong-Kong*, 57.

²⁹⁴ These travelers are also fascinated by less gruesome systems of urban administration. It is worth noting here that late nineteenth century travel writers approach the exam system with a shocked admiration similar to their descriptions of the administration of punishment. That admiration is brief, and swiftly covered in the kind of dismissive cultural comparisons we are familiar with from their descriptions of executions and prisons. Tiffany compares the "Examination Halls of Canton" to "the cattle-yards of Chicago, covering with their acres on acres of pens such vast areas of space." Should the reader not comprehend his comparison between stock animals and Chinese academics, Tiffany clarifies: "mentally subtract from each several pen its ox, and substitute for him a Chinaman with ink and hair-pencil and paper, [then the reader] will realize the whole scene as distinctly as if he were on the spot in China" (Tiffany, *This Goodly Frame*, 123). This scene's similarity to the descriptions of prisons is simple: both portray the Chinese administrative complex and its ability to control the population's behavior and aspirations.

Before comparing Chinese people to oxen, Tiffany offers a brief compliment: bureaucratic examinations are "A ideal programme truly! –if carried out in the spirit as well as in the flesh" (Tiffany, *This Goodly Frame*, 123). Though more inherently laudable than the justice system, the Chinese examination system is also far from ideal in practice. Thus, these authors condemn Chinese individuals to differing degrees, finding systems of Chinese urban

Clark's direct cultural comparison and his racial explanation for the use of torture articulate a more general sense, familiar to earlier readers of *The Punishments of China*, that in China, harsh punishment is unsettling but inevitable. This assertion explains the common attitude that Chinese culture promoted punishments disproportionate to the crimes. It also makes it impossible for readers to detach punishment and law from the racial or cultural beliefs that these authors use to describe them.

These accounts represent Qing punishment as a culturally necessary system of control. Within this scheme, the alternate endings to capital punishment to which I have devoted the preceding chapters (death, commutation) can only be the mistakes of a backward or over-reaching autocracy. Though direct prescriptions for China's future are outside the scope of these simple travel narratives, we can see here the seeds of the dismissal of the possibility for legal reform.²⁹⁵ The authors of these late nineteenth century popular narratives interpreted the traces of punishment on the urban environment to paint a cursory (and mostly imagined) picture of the legal system. That picture is one we have seen reflected in the vague understandings of judicial administration inherited by twentieth century scholars (as I mentioned in chapter one).

Thus these travelers offer their readers glimpses into the system behind the exotic punishments they narrate while helping to effect the popular and, I'd argue, scholarly dismissal of the entire Chinese legal system along with its outdated punishments. As the administration of punishment disappeared from such accounts, so did the cultural context for those punishments. This dismissal and the cultural generalizations extrapolated from these observations left little room for the kind of balance between benevolence and power I have been arguing for; indeed any performance of benevolence would be irrational if China was culturally deficient in the way these travelers suggest.

If travelers left no room for a culturally specific understanding of the performance of the legal system, the advent of truly accessible and wide-spread photography made that possibility even less likely, as we will see.

administration (executions, punishment, examinations) fascinatingly effective in their ability to control the massive populace, but fundamentally flawed in the implementation of this control. The roots of this flaw are both cultural and historical. As, in the view of these outside observers, the philosophies underlying Chinese punishment are ridiculous, and the philosophical attachment to a meritocracy poorly carried out, all the unique governmental structures of urban China are ultimately not modern, and better candidates for abolition than reform.

²⁹⁵ This was by no means a question only asked by outsiders. Chinese reformers also compared Western and Chinese law and society and found China's cruel punishment and jails to be lacking. Chinese reformers, however, suggested that punishments be updated while retaining the underlying justice system. "By comparison of Chinese law with the laws of other countries, *we feel that the essential principles of law of the other countries cannot be considered to go beyond the scope of Chinese law, and that only the penal systems are not quite the same and the degrees of punishment are also different.*" (A memorial by the Commissioners for the Revisions of the Laws of 1905, translated in Meijer, *Introduction of Modern Criminal Law* 164, italics in original).

Twentieth century technology: Western photographs of Chinese punishment

In the early twentieth century, with advances in photographic technology, China observers at home in Europe and North America no longer had to rely on the drawn or textual descriptions of those with the means to travel. Photographs, taken by professional photographers and amateurs alike, circulated both through the mail and by being carried home in suitcases.²⁹⁶ A soldier or traveler with his own camera might bring home his own prints. A traveler could send or bring home prints depicting scenes from China he had purchased from a professional photographer. As in the descriptions of China sent home through the nineteenth century, scenes of corporeal punishment were common.

Photography was a very different medium than what came before. In their early days, photographs proffered viewers access to the unquestionable truth of the scenes they depicted; information that traveled west through pictures was imagined to allow people who could not go to China real first hand knowledge. That that truth was imaginary is not at issue,²⁹⁷ rather, the question is: what kind of truth did these widely circulated images allow Western observers to access? Put differently: what did photographs tell the West about China? And more to the point, what story did photographs of punishment tell about Chinese justice, and what did they leave out? I believe that the precedents set by the pre-photographic literature outlined above are essential to answering these questions. When we locate these photographs as a third step in the nineteenth century tradition of popular depictions of China, we see how these images finally eliminated knowledge about the Qing justice system, proscribing the possibility for native legal reform and allowing cruel punishments to stand in for knowledge about the legal system of imperial China. Snapshots of spectacle stood in for understanding of process.

Photographs, viewed independently of text, differ from the published sources I have discussed so far. While Mason's drawings depict punishments visually, and early twentieth century travel narratives used a few photographs to compliment carefully worded text, photographs of executions stood on their own, promising to the viewer the independence to come to his own conclusions. Post cards in particular, on to which a note of some entirely different subject might be scrawled,²⁹⁸ offered their recipients no assistance with the

²⁹⁶ The twentieth century is exactly distinct from the final days of the nineteenth century in terms of photographic technology, Brook et. al. suggest that "after 1900 ordinary people could own and operate" cameras, a situation that was not true in the preceding decades (Brook et. al., *Death by a Thousand Cuts* 5).

²⁹⁷ On the complicated history and meaning of photography in China, see Eric Hayot, *The Hypothetical Mandarin: Sympathy, Modernity, and Chinese Pain* (Oxford: Oxford University Press, 2009), Rosalind C Morris, ed. *Photographies East: The Camera and its Histories in East and Southeast Asia* (Durham: Duke University Press, 2009), Larissa Heinrich, *The Afterlife of Images: Translating the Pathological Body between China and the West* (Durham: Duke University Press, 2008).

²⁹⁸ Jerome Bourgon has made many of these points before, and his research has considered many of these early twentieth century photographic prints in detail. These documents and scholarship are virtually collected in a internet museum, Turandot (<http://turandot.vcea.net/Project.php>). Bourgon's group of scholars has cross-referenced iconic images of execution that were used throughout the twentieth century in publications as

interpretation of the scene depicted. Without the help of either a blank background with some administrative details (as in *The Punishments of China*) or paragraphs filling in the background with cultural assertions (as in the late nineteenth century travel accounts), iconic photographs such as that of the 1904 execution of Wang Weiqin²⁹⁹ or the execution of Boxers³⁰⁰ stood alone, hiding nothing and similarly explaining nothing.

Photographs of Chinese punishment confirmed the previously held notion that execution in China was cruel beyond European standards. In the century between Mason's book and the advent of widely available photography, the movement to abolish the death penalty in Europe had flourished; no longer were comparisons between China and Europe bogged down by the pesky fact of the near-universal use of capital punishment throughout the West. Punishments like the *lingchi* of Wang Weiqin that French soldiers documented in 1904 seemed that much more foreign, horrific and backwards to early twentieth century Europeans.

While both Mason and the travel writers of the nineteenth century admired, in their own dismissive and racially motivated ways, the benevolence and administration of justice in Qing China, photographs of execution alone left no room for even that engagement with the process leading up to punishment. The only process on display in the photographs of the execution of Wang Weiqin is the one that the executioner followed; as Brook et al put it: "There is no chance that the Frenchmen were simply out for a stroll and happened on the execution, given the care with which the man holding the camera took the sequence of pictures showing the process from beginning to end."³⁰¹ Whatever little attention previous writers focused on the administration of justice was eliminated by the photograph's obsessive documentation of a moment or series of moments; all rudimentary understanding and analysis of Qing judicial administration was left in the bloody dust.

Mason, of course, did not depict *lingchi*, and, try as they might, none of the travel writers cited above seem to have personally witnessed an actual execution. Photographs of this particular punishment added a visceral knowledge of this most gruesome (and seemingly uncommon) practice to the previous hundred years of popular representations of Chinese punishment. As this new knowledge circulated, it took the place of the more didactic and opinionated images and words of Mason and travel writers. Chinese punishment was newly typified, through photographic images of *lingchi*, by the most ghastly of the types of

diverse as textbooks and literature, attempting to place these images in time and space and verify the details of each particular event. Verifying details is essential to Bourgon's points about executions being staged for photographers, as well; while I take the point that Western photographers have a complex relationship to execution, the historical veracity or lack thereof is not my focus. I am, rather, interested in charting Western knowledge or lack of knowledge of the administration of punishment. In concert with this evidential research, Bourgon collaborated on *Death by a Thousand Cuts*, a monograph that explores the meaning of *lingchi* in the Western imagination.

²⁹⁹ This photograph motivates much of the research evidenced at <http://turandot.vcea.net/Project.php> as well as *Death by a Thousand Cuts* (photograph reproduced on page 4). It is also believed to be the execution that Mrs. Little did not witness.

³⁰⁰ Hevia opens *English Lessons* with a decapitation photograph taken during the Boxer uprising (page 2).

³⁰¹ Brook, et. al., 5.

execution used in the early twentieth century. Though nineteenth century observers asserted that execution in China was cruel and backwards, twentieth century observers got to see for the first time and for themselves that executions witnessed by Western travelers were indeed particularly gruesome. Thus photographs allowed *lingchi* to embody Chinese execution and execution to represent the Qing justice system as a whole.³⁰²

As we have seen, conclusions that China and the Chinese were somehow culturally inferior were not new in the twentieth century. But the visceral (or perhaps pornographic) photographs of dead bodies may have produced responses in casual uninformed Western observers that could easily translate into disgust with Chinese law and government as well as people and practices. Where previously knowledge about Chinese punishment had supported the assertion that Chinese beliefs were fundamentally different (and less humane) than Western ones, these gruesome photographs supported the opinion that the Chinese character was not only inferior, but also naturally cruel. Photographs confirmed that the justice system was not only outdated and un-reformable,³⁰³ but failed to control a people who might indeed need Western assistance to come into the modern era. These conclusions blocked any popular knowledge about the justice system from view: the proper response to innate cruelty was not

³⁰² Timing is partially to blame for this shift in focus: many of the earliest photographs of Chinese execution captured the chaos of the Boxer Rebellion and the punishments that followed (punishments that were carried out and enforced by Western soldiers). Photographs of the wake of the Boxer uprising show chaotic scenes of group executions presided over by Western soldiers: even uninformed viewers could see for themselves that China was in chaos, and the implementation of justice required Western supervision (Hevia's *English Lessons* is motivated by this observation). This chaos differed arrestingly from the clinical presentation in *The Punishments of China* and more subtly from the descriptions of place in nineteenth century travel accounts. While those previous writers lay the groundwork for explaining the inevitable fall of an inferior empire, photographs documented unflinchingly the troubles that empire was facing. Photography sealed imperial China's fate.

³⁰³ Reform of the judicial and legal system was not only a topic for Western observers: cruel punishments were also an important discussion topic in the Xinzheng reforms. Western observers and Chinese reformers shared an opinion on the nature of capital punishment in the last days of the nineteenth century: outdated and cruel punishments, enacted through too-complex procedures by bad officials should be reformed. The Case Review system, which became all but invisible to Western observers, was, however, for Chinese experts, a central target of the reform effort. One example, from a joint memorial from the Board of Punishments and the Censorate, translated in Meijer: "The[se] sentences of death exist only in theory and are of a more formal character, which wastes many documents at every session of the Autumn Assizes. At this moment, when we study to establish correspondence between name and reality, and also (want to) save unnecessary complications, it would be much better to change the punishment into perpetual banishment than to give sentences of strangulation merely by way of formality," Meijer, *Introduction of Modern Criminal Law* 172. That the Qing justice system could be reformed at all, or that punishment should be reformed within the existing administration was not, however, a shared opinion among Chinese and Western observers, partially because of the kind of disappearance and misunderstanding of judicial structures I highlight here.

to understand and reform existing legal structures, but to replace them with modern Western ones.

Thus the conclusions allowed by the wide distribution of photographs in the early twentieth century pushed out the more complex (though not necessarily less negative or prescriptive) drawn and textual observations of the previous century. In this way, photographs of capital punishment made nearly impossible an understanding of the imperial Chinese justice system that executed those punishments. All these conclusions served to direct Western experts' and the Western public's attention away from the administration of justice and toward the spectacle of that punishment.

Conclusion: a Just Empire?

By the early twentieth century this popular substitution of the spectacle of imperial Chinese punishment for specific knowledge about legal and governmental systems allowed Western observers to dismiss Chinese law and governance as despotic, backwards, inhumane. I have pursued this popular genealogy to come full circle back to the scholarly genealogy with which I began this study. We are not exempt, in the twenty-first century, from the rumors, misunderstandings, cultural simplifications and, most fundamentally, substitution of spectacle for the larger performance of administration that I have considered both here and in my initial rehearsal of the twentieth century academic understanding of Case Review. Disappearing the structures that brought punishments to pass does them no justice. Indeed, such an oversight makes impossible a culturally and temporally specific understanding of justice itself. I have presented topics within the Case Review system that administered these spectacular punishments to argue that the Qing was concerned with demonstrating different values than those that nineteenth century Westerners, and to some extent twentieth century academics, saw, values that compose the very definition of justice itself.

What, for the Qing, were those values? First and foremost, the Qing valued the proper administration of punishment. As I documented in chapter two, that administration required a massive amount of both paperwork and time. As Case Review required the personal involvement of the emperor, that bureaucracy was dependent upon multiple levels of automatic review. That review took work which was made selectively made apparent in reports. The disappearance of some of this work both masked the ways that the redundant and administratively difficult system of Case Review followed its own logic and made the functioning of that system possible.

Intertwined with the value that the Qing placed on the proper administration of punishment is the value it placed on the representation of that administration within official reports. The reductions of information I drew attention to in chapter two were effected in the course of the normal bureaucratic process, but mistakes in the administration of punishment also make plain the amount of work that officials of all levels put in to smoothing over moments where the system itself might be questioned. In chapter three I looked at one such moment, arguing that the proper administration of punishment depended on a narration which re-wrote mistakes so that they would fit into the empire's master narrative of benevolence. This representation of punishment within official reports maintained and justified the bureaucratic organization into which prisoners consistently got lost. Systemic miscarriages of

justice were dealt with through clever narration and changing oversight rather than reform. Though we see many ways that the administration of justice responded to changing social conditions, we also see, in the cleaning up of dead captives, that the Qing valued more highly making visible the proper performance of all officials and than it valued reforming Case Review itself.

To these two values, the proper administration of punishment and the proper representation of the administration of punishment within the justice apparatus itself I add a third: the Qing valued the proper performance of the administration of punishment to the general public. The investment in redundantly reviewing sentences was not merely a way for officials to demonstrate to their superiors that they took their jobs seriously. Rather, these bureaucratic processes were performed to the public at large, not only through the act of public punishment itself, but along the path between crime and punishment. As I argued in chapter four, the Qing made a unique investment in moving captives across the landscape. This practice, despite its difficulties, cast criminals both as living documents whose veracity was above reproach and as evidence for the general public of the import the empire put on capital punishment properly administered.

This performance of proper punishment also came to stage with the reduction and commutation of capital sentences. The Qing made a large investment in the concept that the empire could both control and forgive, be powerful and benevolent in turn. That investment, like the other investments in the redundant Case Review system, required flexibility and upkeep. And that investment, which paid off only when advertised to the general public, ultimately too may have allowed the system itself to get overwhelmed, contributing to the Qing's difficulties in its last days.

Thus, if we are to define justice in the Qing on its own terms we must take these three values into account, values which are not made apparent by looking simply at the spectacular rituals of administration and punishment with which I began this study, nor by looking at a single document set. Justice, in the Qing, was based on a belief that punishment could be meted out properly, and that that proper execution could be performed. It was also based on the belief that benevolence, or forgiveness, was a constitutive part in that proper execution. While this is a far cry from the (also simplistic) innocent until proven guilty mantra of the West, it shares more with that conception than Mrs. Little's "tragic spectacles" or Spence's "The Qing penal system believed that punishment should be carried out in the open as a warning to others"³⁰⁴ would lead one to believe.

Throughout this study I have used the metaphor of performance to cast light upon the ways that the administration of capital punishment was represented to various audiences: officials, commoners, criminals and the most powerful members of the Qing bureaucracy. These different audiences had different stakes in the practice of punishment, but I believe looking at the way punishment was represented differently for some of these different audiences has allowed me to highlight the significant investments this empire made in maintaining and demonstrating a balance between power and benevolence.

Capital punishment in any time or space is loaded with meaning. Those meanings are tangled and messy; the death penalty will never mean the same thing to different people. If we were to say what Qing capital punishment really meant, we would likely find some

³⁰⁴ Jonathan Spence, *Chinese Century*, 29.

disagreement from the murderer, his mother, the executioner, the magistrate, the traveler, the newspaper reader or the emperor himself. But this simple fallacy, that execution (or justice itself) can be cast in one particular light, has persisted. Rather than attempt to access the internal lives of any of these audience members, I have chosen to go back and understand the process leading up to capital punishment, in an attempt to begin to access a culturally and temporally specific understanding of the ways that the entire system of justice pervaded their lives. Public punishment is not merely a spectacle of power; rather, in the administration of punishment, in the paths that lead away from that punishment as well as in the varying perceptions of those punishments I find a matrix of performances for infinitely disparate audiences, one which daily asserted (or attempted to assert) the benevolence and power of Qing rule.

While the punishments that Western and other observers have pointed to were clearly cruel and right in line with the kind of pre-modern punishments we are familiar with from other world areas and times, the justice system for which those punishments were imagined to be metaphors for was neither simple nor arbitrary. Those punishments were also a minute part of a set of legal procedure that for centuries invested vast amounts of administrative manpower in allowing some, indeed many, criminals to be released or suffer a lesser punishment. I believe that the Qing's ideology of benevolence and its practice of capital punishment are not in conflict; rather the ultimate power demonstrated by the death penalty can only be understood in the context of the performance of the administration of those punishments. I have no interest in writing an apologist tract for any human suffering, but I do see in the Qing an empire genuinely concerned with performing both power and benevolence, in communicating, through both punishment and the demonstration of the administration of those punishments, both its great ability to control and its great ability to forgive. When viewed through the lens of the Case Review system I see an autocratic empire committed to its own definition of and investment in justice, even to the edge of its own collapse. It is my hope that more specific research can begin to eschew those simplistic, culturally coded notions usually used to analyze Chinese punishments, and that we can begin to bring out from the shadows the way that those stereotypes continue in the twenty-first century.

Sources Cited by Abbreviation

- AS Academia Sinica Grand Secretariat Archives. 內閣大庫檔案 Held and accessed at the Academia Sinica Institute of History and Philology. Cited by document number.
- GSU Genealogical Society of Utah. Microfilmed records from the Grand Secretariat memorials on criminal matters in the category “Autumn Case Review.” Cited by GSU’s film number, item number if available and Chinese date. Please note: this collection was microfilmed in Beijing and cataloged in Utah. Item numbers cited on the microfilms themselves do not always match the item numbers cited in the GSU catalog. In general I have erred on the side of identifying these documents so that other researchers can find them in the GSU’s collection; finding them in the original collection in Beijing would take some work.
- LFZZ *Junji chu Lufu Zouzhe* 軍機處錄副奏摺 Grand Council reference copy archives under the category ‘law: Court, Autumn and Summer Reviews.’ Held and accessed at the First Historical Archives of China in Beijing. Cited by document number.
- STF Shuntian Fu (Prefecture) Archive, held and accessed at the First Historical Archives of China in Beijing. Most cases are from Baodi county and all records used here are from the category “legal cases” (*falü cisiong* 法律詞訟). Records are cited by microfilm number and Chinese date (if available).
- SYD *Shangyu Dang*. 上諭檔 published in Beijing by the 中國第一歷史檔案館編 *Zhongguo di yi lishi dang’anguan* 發行新華書店北京發行所 *Dang’an chubanshe*, 1991. Cited by document number, page and Chinese date.
- XKSS (*Neige Xingke Shishu*) 內閣刑科史書 Grand Secretariat Registry for routine memorials for the Board of Punishments, held and accessed at the First Historical Archives in Beijing. Cited by volume number and the first Chinese date in the volume.
- XKTB Grand Secretariat routine memorials on criminal matters (*Neige xingke tiben*) 內閣刑科題本, held and accessed at the First Historical Archives in Beijing. Memorials are cited by category (“jails and prisons” or “criminal punishment”), document bundle number, and the Chinese date.

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