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HOMICIDE AND INSANITY IN QING CHINA

University of Hawaii

PH.D.

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HOMICIDE AND INSANITY
IN QING CHINA

A DISSERTATION SUBMITTED TO THE GRADUATE DIVISION OF THE
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Abstract

This study is an investigation of how and why insane lawbreakers were treated in Qing China. It serves to fill the lacunae in the English language literature on criminal insanity in Qing China and, secondarily, to mediate between the conclusions forwarded by van der Valk and B  nger. Three principal themes presented themselves at the outset. First, Qing laws concerning the insane, particularly those requiring mandatory confinement of all insane persons, were an integral part of the imperial push for social control. Second, the problem of punishing insane killers provoked a compromise between pro- and anti-punishment officials. Third--and this relates to the second theme--the possible exploitation of the insanity plea by sane murderers was a constant concern. These themes were not so much directly addressed as they are inferred throughout this study, in keeping with their ubiquitous aspect.

The basis for the conclusions and generalizations which are presented in this study is the 100-plus leading cases, internal memoranda of the Board of Punishments, and

general circulars concerning insane offenders which were culled from a myriad of primary sources. Although these do not constitute all of the legal materials on the subject of criminal insanity in Qing China, it is possible, on the basis of the available sources, to make definite statements about the evolution of Qing laws dealing with criminal insanity; Qing fears over possible exploitation of these laws by "hardened criminals"; the debate between pro- and anti-punishment officials over the issue of punishing insane criminals; and the manifold problems involved in prosecuting insane criminals.

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Chapter One

Introduction

This study was prompted by the debate between M. H. van der Valk and Karl Bün¹ger over the issue of whether insane lawbreakers were punished under traditional Chinese law. Their articles comprise the only English language treatment, however brief, of criminal insanity in China. The first salvo was fired by van der Valk in his critique of Bün¹ger's monograph on Tang law, *Quellen zur Rechtsgeschichte der T'ang-Zeit*. He disagreed with Bün¹ger's assertion that the exemption of "lunatics" from criminal prosecution was a "fundamental notion" of ancient China. He also found fault with Bün¹ger's methodology for the reason that the latter regarded Tang practices as typical of classical Chinese law. Van der Valk averred that lunatics had always been held criminally responsible and were accordingly punished, even during the Tang period, although their punishments were sometimes lighter than those for "sane" offenders. Finally, he criticized Bün¹ger for not having consulted Ernest² Alabaster's *Notes and Commentaries on Chinese Criminal Law*, in which it is clearly established that lunatics were

punishable under Qing law. Had B nger done so, he would not have mistakenly concluded that the exemption of lunatics from criminal prosecution was a fundamental notion of ancient China.

B nger responded to van der Valk's critique with an article titled, "The Punishment of Lunatics and Negligents According to Classical Chinese Law,"³ in which he reiterated and buttressed his original thesis. He cited select passages from the ancient *Zhou li* 周禮 (Rites of Zhou) and the Tang Code which clearly indicated to him that lunatics were treated with clemency. In reply to van der Valk's assertion that under Qing law lunatics were held criminally responsible and punished accordingly, B nger pointed out that the Qing Code provided punishments only for those guilty of committing multiple homicide.

This dispute between van der Valk and B nger stemmed from their respective methodologies. The former based his conclusion on one Tang case and several other Qing cases in which the insane offenders were actually punished. B nger on the other hand, practically discounted such cases as unrepresentative of traditional Chinese legal practices. He developed his thesis on the basis of the legal philosophies expressed in such works as *Zhou li*, the Tang Code, and certain statutes of the Qing Code. In other words, both van der Valk and B nger were selective in their choice of sources, utilizing only those materials which supported

their preconceptions about Chinese law.

This study is an investigation of how and why insane lawbreakers were treated in Qing China. It serves to fill the lacunae in the English language literature on criminal insanity in Qing China and, secondarily, to mediate between the conclusions forwarded by van der Valk and Büniger. Three principal themes presented themselves at the outset. First, Qing laws concerning the insane, particularly those requiring mandatory confinement of all insane persons, were an integral part of the imperial push for social control. Second, the problem of punishing insane killers provoked a compromise between pro- and anti-punishment officials. Third--and this relates to the second theme--the possible exploitation of the insanity plea by sane murderers was a constant concern. These themes are not so much directly addressed as they are inferred throughout this study, in keeping with their ubiquitous aspect.

The incessant push for imperial control over all aspects of life in China found expression in the Qing Code. When the first Qing Code was published in 1646, it contained only 382 statutes. By 1863, the number had reached the peak figure of 1,892.⁴ The nearly sixfold increase in statutes represents the response of the Qing legal system to increasingly complex social conditions. Opium smoking, for one, a minor transgression in the seventeenth century, grew to be an increasingly serious social problem throughout

the eighteenth and nineteenth centuries, triggering a volley of legislative activities aimed at combating both the cultivation and consumption of opium. The new laws essentially were amendments of previous ones: each was designed to tackle new problems not accommodated or anticipated by their predecessors. Also, the growing use of firearms was matched by a concomitant rise in the number of deaths caused by misfires, and a slate of new statutes dealing with firearms-related homicide were formulated.

Similarly, the newly-recognized problem of insanity prompted the registration-confinement statute of 1740, the first serious attempt at legislating behavioral disturbances. This unprecedented law paved the way for the 1754 statute calling for the short-term incarceration of insane killers, which subsequently led to the formulation in 1762 of the life-imprisonment statute. These two homicide laws codified clemency toward insane killers; however, as many Qing officials feared the exploitation of these lenient laws by "hardened criminals," the death penalty for single homicides committed by insane persons was subsequently instituted in 1802.

The high premium placed by the imperial government on the maintenance of social control also prompted the creation of a number of institutions which were specifically designed to mold the minds and restrict the activities of the populace. Foremost among the means of popular indoctrination,

and potentially the most effective, was the *xiangyue* 鄉約 lecture system. Twice a month, on the first and fifteenth day, the appointed lecturer and his assistant expounded on the values considered most desirable by the Qing emperors to a gathering composed of all the elders, scholars, and commoners of the locality in which the lecture was held. The *xiangyue* lecturer was also required to record the culpable as well as the praiseworthy conduct of persons living in his locality. In order to reinforce the message of the lectures, the names of persons guilty of social misconduct were posted in special pavilions erected specifically for such a purpose. The names were removed only after it had been determined that⁵ the culprits had reformed their previously-deviant behavior.

Another means of popular indoctrination was the *xiangyinjiu* 鄉飲酒 (community drinking ceremony). This compulsory affair was held twice a year at the district or prefectural seat and attended by members of the local gentry as well as a few, chosen villagers. The purpose of the ceremony was, as in the case of the *xiangyue* lecturers, to inculcate in the minds of the people the values which the Qing emperors believed were crucial to the maintenance of a stable society. Loyalty, filial piety, fraternity, obedience, neighborliness, and respect for the aged were ingeminated in the prescribed, set speeches and in the imperial decree that was issued especially to be read at the ceremony. Concomitantly, conduct that violated these

accepted values was denounced during the ceremony.⁶

Since the literati played an important role in popular indoctrination and in serving the state, it was not surprising that the Qing government spared no efforts to control their minds as well. Mindful of the activist tradition of the *shuyuan* 書院 (private academies), the early Qing rulers initially made some tentative attempts at stemming their proliferation; however, they soon realized that a better alternative was to appropriate to their own use the private academies as tools for ideological control. In 1733, the Yungzheng emperor ordered the establishment, using public funds, of a private academy in every provincial seat throughout the empire, thus creating overnight a total of twenty-one government-subsidized private academies. To improve their competitive edge over other, private institutions, students attending these schools, as well as their teachers, received stipends from the government. Later the same year, the emperor inaugurated imperial supervision over all private schools with an edict that mandated all *shuyuan* to be reported to the district, prefectural, or provincial authorities for scrutiny. Eight years later, in an effort to standardize and control the contents of local education, the government distributed approved textbooks to the private schools.⁷

Besides the *shuyuan*, there were two other types of local schools--the *shexue* 社學 (community schools) and *yixue*

義學 (charity schools). These generally had a lower scholastic standing than the *shuyuan* and were created by the Qing government especially for those rural inhabitants who could not attend the urban academies. These rural schools were not created by the government for altruistic reasons but for the purpose of spreading orthodox ideology to as many budding scholars as possible. A measure of the extent to which the Qing government attempted to achieve uniformity through the local education system can be found in a 1737 edict that ordered the establishment of a *yixue* in every district in the province of Fujian, so that the Fujianese⁸ could learn the correct, official mandarin dialect!

Ideological control of the literati was not limited only to the molding of the minds of future generations of scholars; it also included suppression of unorthodox literary efforts of mature scholars. The literary inquisition of the Kangxi, Yungzheng, and Qianlong periods (1662-1795) served notice to the literati that nonconformist writings would not be tolerated by the government. During the Yungzheng period (1723-1735), inspectors of morale were appointed by the emperor to keep an eye on the activities of the literati and students, and to supervise educational and examination programs. They were also entrusted with the responsibility of keeping under strict surveillance those scholars who had been convicted of writing nonconformist⁹ works. Under the Qianlong emperor (1736-1795), literary

inquisition went beyond mere author-suppression to become a large-scale, systematic effort to search out and destroy "seditious" works published during the Qianlong period as well as those printed generations earlier.¹⁰

Besides popular indoctrination and suppression of nonconformist writings, imperial control also included surveillance of the day-to-day activities of the populace. The *baojia* 保甲 system, resurrected in the early-Qing period for the purpose of police control, was designed to serve two basic functions: 1) registering households and adult males in the towns and villages throughout China, and 2) detecting and reporting crime. Households were consolidated into units of ten, and each registered person was required to report to the headman of his unit, the presence of any criminals or suspicious persons in the neighborhood as well as any crimes committed there. The headman was in turn required to relay such information to the local authorities. Just as the *baojia* was accountable for the conduct of member households, each household likewise was responsible for the behavior of its individual members.¹¹

Another instrument of control, particularly in rural areas, was the office of *difang* 地方 or *dibao* 地保 (local constabulary). It is uncertain as to when the office was established, but by the mid-eighteenth century it was allocated responsibility for crime detection/prevention and tax collection.¹² The *dibao* was directly responsible to the

magistrate and served as an important intermediary between the magistrate and the common people. In localities where the *baojia* was not functioning properly, the office of *dibao* filled the vacuum by assuming the responsibilities of the *baojia* and thus became the premier instrument of rural control.¹³

The recruitment of the *baojia* and *dibao* systems in the Qing scheme to register and confine all the insane persons throughout the empire was tantamount to labelling the insane as "criminal deviants." Kai T. Erikson, in his study of three "deviant epidemics" in Puritan society, postulates that every community has its own characteristic styles of deviant behavior. These styles are conditioned by the community's emphasis on particular types of values:¹⁴ political, economic, religious, and so forth. The dominant values of Puritan society, for instance, were of a religious nature, hence deviance took on a religious character. Similarly, the high premium placed by Qing society on the maintenance of public order is attested by the equation of insanity with criminal deviance.

The enactment of laws spelling out penalties for homicides committed by the insane amounted to an official recognition of insane killers as criminals. But until 1754, when the statute calling for short-term incarceration of insane killers was formulated, such offenders were simply turned over to the custody of their

families. By mandating imprisonment, the government had, in effect, appropriated what had been a family responsibility. Such an appropriation seems to be part of a general trend in Qing criminal law. For instance, during the Qing period the government sought to prevent private justice by enacting laws which regulated communal feuding.¹⁵

The structure of the Qing Code enabled the legal system to accommodate the demands of the state as well as those of a rapidly-changing society. The primary framework of the Qing Code was made up of more than four hundred *li* 律 (statutes). The bulk of these statutes were inherited with little or no change, from the previous Ming Code. The ossified statutes were supplemented by a body of laws called *li* 例 (substatutes), designed to accommodate change within tradition. Substatutes were ad hoc additions to the Code, having their origin in imperial edicts and individual legal judgments pronounced by the Board of Punishments which were prompted by new legal cases. It was the substatutes that provided flexibility to the Qing legal system, enabling it to respond to social change. Additionally, the substatutes allowed the legal system to make provisions for all possible variations of any given offense. It was with the use of substatutes that penalties for homicides committed by the insane were stipulated in the Qing Code.

The subject of homicide in Qing criminal law is

vast. Ernest Alabaster, for example, devoted fully one-hundred-and-twenty-five pages of his *Notes and Commentaries on Chinese Criminal Law* to the subject. As Alabaster points out in his book, the word *sha* 殺, to kill, is extremely comprehensive. Any act that, directly or indirectly, caused the death of another person was considered an act of homicide. The Qing Code, in its treatment of the subject, differentiated well over twenty varieties of homicide; however, it is possible to group the myriad kinds of killing into six major categories:

1) *Mousha* 謀殺 (premeditated homicide or homicide by previous design). Cold-blooded murder belongs to this category of homicide. The punishment for such a crime was decapitation after the assizes¹⁶ for the plotter-perpetrator and strangulation after the assizes¹⁷ for the accomplice.

2) *Gusha* 故殺 (homicide by instant design). Homicides committed in a fit of passion--for example, anger, shame, humiliation, and so forth--belong to this category. This was considered intentional homicide. The punishment was, as in the case of premeditated homicide, decapitation after the assizes.

3) *Dousha* 鬥殺 (homicide committed during an affray). The distinction between *dousha* and *gusha* is that in the former, the intent to kill life was absent at the time of the killing. The punishment for this kind of homicide was

strangulation after the assizes, a lighter penalty than that for *gusha*.

4) *Xisha* 戲殺 (killing during sport or horseplay). This was considered unintentional homicide. The punishment was strangulation after the assizes.

5) *Wusha* 誤殺 (mistaken homicide). This was defined as killing the wrong person, one with whom there was no quarrel and to whom no harm was intended. The victim could be an innocent bystander witnessing a fight, or he could be the victim of a case of mistaken identity. The punishment for *wusha* was strangulation after the assizes.

6) *Guoshisha* 過失殺 (accidental homicide). The distinction between *guoshisha* and *wusha* is that in the latter, the intent to kill life was there, but not the life that was actually killed. For a homicide to be considered *guoshisha*, it must have been purely accidental and unavoidable. It must fit the requirement that "the use of eyes or ears could not have avoided the accident, and no care or thoughtfulness could have prevented it" (耳目所不及, 思慮所不到). This criterion was very rigidly adhered to. For example, a hunter equipped with a musket was on his way to the woods when he passed the house of a friend. It so happened that the friend was sitting by the window of his house and, seeing the hunter, invited him in for supper. Because the hunter had a pipe in his mouth, he could not answer his

friend but shook his head instead. A spark from the pipe fell into the hole in the breech of the musket, ignited the charge, causing a misfire that killed the hunter's friend. The governor-general of Zhili opined that although the circumstances approached that of *guoshisha*, the crime could not be considered as such. He offered two reasons for his opinion: 1) At the time of the killing, the hunter and his friend were only a few feet apart, therefore it could not be said that "the use of eyes or ears could not have avoided the incident." 2) It was common knowledge that sparks ignite gunpowder. The hunter should be aware that smoking a pipe in close proximity to a loaded musket was dangerous. His carelessness caused the death of his friend; had he been more careful, the death could have been avoided.¹⁸ The punishment for *guoshisha* was a fine of 12.42 taels of silver, to be turned over to the victim's family as a form of "funeral money."¹⁹

The statutes and substatutes governing *xisha*, *wusha* and *guoshisha* constituted a discrete group within the homicide section in the Qing Code. It is within this group that the substatutes concerning homicides committed by insane persons were listed. However, it should be noted that such homicides were not considered either *xisha*, *wusha*, or *guoshisha*.

The punishments mentioned in the preceding pages were applicable only in situations where the killer and the victim were of equal social or familial status. This is because the

process of Confucianization of law in China had produced a number of distinctively Confucian features in traditional Chinese law codes. For example, in keeping with the Confucian emphasis on *li* 禮 (propriety), the codes provided penalties which differ according to the relative status of the perpetrator with respect to his or her victim. In other words, superiors enjoyed a number of legally-sanctioned privileges, usually at the expense of their inferiors. For example, parents were permitted to inflict injuries on, or even to kill, their children without being liable to severe punishments. During the Qing dynasty, parents found guilty of murdering their children were only liable to the very light penalty of sixty strokes with a heavy bamboo and exile for one year. In contrast, children found guilty of killing their parents were, without exception, given the sentence of *lingchi* 凌遲 (death by slicing) and, as will be shown in Chapter Three of this study, not even insanity could be accepted as a mitigating factor.

Another product of the Confucianization of law, one that was closely related to the emphasis placed on the family, was the notion that killing two or more persons of the same family was a much more serious offense than killing the same, or even a greater, number of persons not related to one another. The basis for this notion was that such a massacre could, at best, destroy the integrity of the family involved and, at worst, even lead to the extinction of that

family. Thus, a person who murdered three members of the same family, for example, was liable to the punishment of *lingchi*, and his property was to be confiscated. In contrast, a person who murdered three unrelated persons was to be tried and punished only for the killing of one. In other words, he was only liable to the penalty of decapitation. This notion also found expression in the Qing treatment of insane persons guilty of killing several persons belonging to the same family.

In order to understand the response of the Qing legal system to the problem of criminal insanity, it is necessary, first of all, to become familiar with the concepts of insanity which were prevalent during the Qing period. Medical concepts and popular beliefs concerning insanity are discussed in Chapter Two. Generally speaking, practitioners of Chinese medicine regarded insanity as a physiological illness whose etiology and treatment were fundamentally no different from those of any other physical ailment. The bulk of the medical treatises and case histories used in this study is culled from the section on medicine in the Qing encyclopedia, [*Qinding*] *gujin tushu jicheng* [欽定古今圖書集成] (*Synthesis of Books and Illustrations Past and Present*, also called *The Imperial Encyclopedia*).²⁰ These treatises and case histories are collected under the heading *diankuang* 癲狂 (insanity), and represent the sum total of Qing knowledge concerning insanity up to 1725, when the

encyclopedia was published. This body of knowledge is supplemented by the works of later Qing physicians.

Following the format of the encyclopedia, traditional medical concepts of insanity are presented in chronological order in Chapter Two.

An important source for traditional, popular beliefs is the *xiaoshuo* 小說 (literally, the talk of lowly folk), jottings of local sayings, tales, and customs. This literary genre experienced a boom during the early-Qing period, due to the fact that many disillusioned Ming loyalists, choosing to retire to their native places rather than serve the alien dynasty, occupied their spare time with excursions among the common folk, tapping and recording this reservoir of popular wisdom.²¹ Hundreds of *xiaoshuo*, representing the work of generations of scholar-reporters, are collected in the Qing and early-Republican editions of *Biji xiaoshuo daguan* 筆記小說大觀, a treasurehouse of Qing popular beliefs. The bulk of the supernatural tales used in this study is culled from these editions. Supplementing the *xiaoshuo* are newspaper stories, eighteenth- and nineteenth-century European eyewitness accounts, and twentieth-century anthropological studies on Chinese folk beliefs and customs. Generally speaking, the average, lay Chinese often explained insanity in terms of such popular beliefs as retribution for sins, the loss of one's soul, and spirit possession. These beliefs, especially that of retribution, fostered a generally

unsympathetic attitude toward insane persons. It will be shown in Chapter Two that popular explanations for insanity are remarkably tenacious; as Ilza Veith notes in her article, "The Supernatural in Far Eastern Concepts of Mental Disease," centuries-old explanations for insanity continue to be held in parts of China and Japan.²²

The evolution of laws dealing with single, multiple, and intrafamily homicides committed by insane killers is charted in Chapter Three, in conjunction with the official explanations for each new statute. Since provincial officials in traditional China were not trained legal experts, they often encountered difficulties with the myriad legal procedures and committed various judicial errors for which they were sharply rebuked by the Board of Punishments. A variety of actual penal cases is presented in Chapter Four to illustrate the manifold problems involved in prosecuting insane criminals.

The charting of the evolution of Qing laws concerning homicides committed by the insane was greatly facilitated by Xue Yunsheng's *Duli cunyi* 讀例存疑²³ and Nakamura Shigeo's *Shindai keihō kenkyū* 清代刑法研究. Xue Yunsheng, a late-Qing legal scholar and a one-time Board of Punishments official, commented extensively on most items in the Qing Code and included the dates of enactment and revision of many of the statutes. Although some of his dates are not precise, his book is an indispensable source of information

for enactment dates. The book does have one major shortcoming. Xue lists each substatute in its late-nineteenth century form, followed by commentary on when a substatute was first enacted and subsequently revised. He does not however, indicate which parts of a substatute were added to its original form in the process of revision. This problem is partially remedied by Nakamura Shigeo who through meticulous scholarship, has done precisely this for a number of Qing laws concerning insane persons. Extensive cross-checking is necessary in order to determine accurately the enactment dates of the various substatutes.

The basis for the conclusions and generalizations which are presented in Chapters Three, Four, and Five is the hundred-plus leading cases, internal memoranda of the Board of Punishments, and general circulars concerning insane offenders which were culled from a myriad of primary sources. These do not constitute all of the legal materials on the subject of criminal insanity in Qing China. For example, district-level trial records were, unfortunately, unavailable. However, it is possible, on the basis of the available sources, to make definite statements about the evolution of Qing laws dealing with criminal insanity; Qing fears over possible exploitation of these laws by "hardened criminals"; the debate between pro- and anti-punishment officials over the issue of punishing insane criminals; and the manifold problems involved in prosecuting insane

criminals. As John Carroll puts it so well in his book, *Puritans, Paranoid, Remissive: A Sociology of Modern Culture*, "Our task then is, like a still-photographer, to make detailed portraits of key moments, which, when viewed together, will bring out the lines of significant change."²⁴

Chapter Two

Concepts of Insanity in Qing China

In 1702 Father Jean-Francois Fouquet, a Jesuit assigned to the Catholic mission in Jiangxi province, described in a letter to his friend in France a strange incident concerning a Chinese family who, because its members were afflicted with pernicious bouts of madness, turned in desperation to a Catholic priest for relief. This account is particularly instructive because it illustrates how an ordinary Chinese family reacted to the problem of insanity. The following is an abbreviated version of Father Fouquet's narrative.

In a village neighboring the town of Fuzhou (撫州) in Jiangxi province, there lived a young woman who suffered from periodic fits of madness. Most of the time, she behaved in a normal fashion, but occasionally, she was seized with madness and lost touch with reality. She hallucinated and treated illusory things as if they were real. She even tried describing these things in very vivid language. When some Catholic catechists, who were active in the area, found out about her illness, they began preaching

to her about Christianity. Their efforts seemed to have some effect on her, but not in the way the catechists had intended. According to some reports, the young woman "began acting like a baptized person." When her neighbors asked her why she bothered with such things as the sign of the cross and holy water, she replied enigmatically that both the cross and water were "as fearful as death itself." The young woman was not the only person in her household to be afflicted with this illness: four of her male relatives also began acting strangely. At times, these young men were quite violent and when left alone they would start a fist fight among themselves. Many kinds of medicine had been administered to cure them of this terrible affliction.

When the family of the young woman was about to give up hope, a Taoist leader who called himself Zhang Tianshi (張天師), after the reputed founder of religious Taoism visited the town of Fuzhou. According to Father Fouquet, "All the sick and unfortunate people of Fuzhou flocked to the Tianshi, in order to seek deliverance from their troubles." The family of the young woman was no exception. Besides buying paraphernalia from the Taoist leader and his followers, the family also hired them to perform religious rites at their home, but the young woman's illness did not disappear.

Finally, a Catholic friend told the woman's family that the illness was caused by the devil and that if they

wanted the young woman and her four young relatives to be cured of their affliction, their only recourse was conversion to Catholicism. The family, "desperately in need of help from God," sent someone to a Jesuit priest called Chavagnac to ask him to help them. At first, Father Chavagnac refused to visit them because he thought that they were too deeply-rooted in "idolatry" for him to be of any help. When the family learned the reason for Father Chavagnac's refusal to visit them, they removed all the "vestiges of paganism" from their house and brought them to Father Chavagnac. The priest finally relented and sent a few of his trusted disciples to the supplicants' house.

"Armed with a crucifix, a small figurine of Jesus, rosaries, and holy water, the disciples made their way to the sick people's house. Immediately upon their arrival, the fits of madness dissipated and vanished. A Buddhist priest who witnessed this miracle, instead of giving praise to the Lord, dismissed the cure as mere happenstance. But the Almighty God, in order to demonstrate once and for all that the illness was cured by the disciples, allowed the symptoms of madness to reappear. Under the watchful eyes of everyone present, the disciples attended to the five supplicants. They hung rosaries on the necks of some and poured holy water on the others. Once again, the raving madness subsided. The disciples then placed a crucifix at the most prominent place in the house, vessels of holy water and some candles were also set down in various parts of the house.

Needless to say the cure was complete and permanent. From this time on the family was spared the ruckus and commotion that frequently accompanied the fits of madness."²⁵

In this particular account, the first recourse the family turned to was herbal medicine, probably prescribed by a practicing physician. When the illness lingered on and

conventional medicine did not seem to have any palliative effect, the family turned to the Taoist priests who were visiting the area. The young woman obtained some "scribblings" from the priests which she presumably burned so that the ashes could be mixed in water or some medicine and consumed. As an added insurance, the family also hired the Taoist priests to perform rites of exorcism, in order to expel the evil spirit whom they believed was responsible for the illness. Since the Chinese customarily canvassed the entire pantheon when they needed supernatural help, it is not out of character that this family turned to the Christian God as well. In fact, the Jesuits recorded many such instances in their journals and letters.²⁶

The eclectic and idiosyncratic response of the young woman's family to her illness is typically Chinese. As Emily Ahern points out in her article, "Chinese-style and Western-style Doctors in Northern Taiwan," the choice of healer depends largely on the patient's (or the family's) perception of the cause of a given illness.²⁷ At the onset of the illness, the young woman's family perceived her madness as physiological in nature, thus they turned to herbal medicine for cure. When her condition failed to improve, her family changed its perception of the cause of her affliction, thus they turned to the Taoist priests and Father Chavagnac for help.

Generally speaking, there were two kinds of

explanations for insanity. Practitioners of Chinese medicine regarded insanity as a physiological illness whose etiology and treatment were fundamentally no different from those of any other physical ailment. The average, lay Chinese often explained insanity in terms of such popular beliefs as retribution for sins, the loss of one's soul, and spirit possession. The following sections detail these two approaches to the problem of insanity.

Medical Concepts and Treatments

Numerous explanations and treatments for insanity are documented in traditional Chinese medical treatises. Two major types of insanity are identified: *dian* 癲 and *kuang* 狂, each with its own set of causes and manifestations. Many physicians however, did not distinguish the two but treated them as a single ailment, *diankuang*. Traditional Chinese medicine is essentially symptomatological and the medical treatises consequently contain graphic descriptions of anomalous behavior, such as "streaking in public" and "singing and dancing in the streets." Since explanations and descriptions of *dian* and *kuang* are closely related to the existing state of medical knowledge, traditional concepts of insanity are presented in chronological order along with an analysis of pertinent, contemporaneous developments in Chinese medicine. As was noted in Chapter One, the bulk of

the medical treatises and case histories used in this study is culled from the Qing encyclopedia, *Gujin tushu jicheng*. These treatises and case histories are collected under the heading of *diankuang*, and represent the sum total of Qing knowledge concerning insanity up to 1725, when the encyclopedia was published. This body of medical knowledge is further supplemented by the works of later Qing physicians. It should also be noted here that the medical treatises mentioned in this section were considered standard texts by Qing physicians.

One of the earliest medical treatises is *Huangdi neijing* 黄帝内经 (Inner Classic of the Yellow Emperor), compiled sometime between 481 B.C. and 403 B.C.. In this medical classic, insanity was explained mostly in terms of yinyang imbalance, a conviction retained by most practitioners of Chinese medicine up to the present day. The majority of traditional Chinese physicians believed, and still do, that an overabundance of yin in the body is a major cause of *dian*, while *kuang* is attributed to an excess of yang. An illness caused by a pathological excess of yang is described in *Huangdi neijing*. The afflicted person displays an aversion to people and heat, startles at clapping noises, and shows a tendency to withdraw from all human intercourse by tightly shutting windows and doors. During the crisis, when yang is redundant, there is a desire to ascend heights, to chant or sing, to "streak" in public, and to curse people,

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including close relatives. In another passage of *Huangdi neijing*, the legendary Yellow Emperor asks his minister, Chi Bo, what makes it possible for a *kuang* person to ascend heights, a feat that normally cannot be accomplished. Chi Bo replies that because the four limbs belong to the yang part of the body, they become "firm" when yang is redundant. When the limbs are firm, a person can climb up high places without difficulty. The Yellow Emperor further asks why a *kuang* person tends to strip off his or her clothing. Chi Bo explains that when yang is overabundant, the body becomes hot, thus "streaking" is simply an attempt to cool off. The Yellow Emperor then asks why a *kuang* person curses people indiscriminately. Chi Bo explains that yang redundancy causes a person to lose his or her sense of propriety and thus to curse people, including close relatives. The commentary to this particular passage further explains that an overabundance of yang confuses the rational senses of a person, thus causing the person to scold or curse people without any regard to their status.

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In the medical treatise *Bianjiu nanjing* 扁鵲難經 (Bianjiu's Classic of Difficult Problems), compiled sometime between 403 B.C. and 222 B.C., there is a discussion on the difference between *dian* and *kuang*: At the onset of *kuang*, the patient hardly ever sleeps and is never hungry. The patient develops a superiority complex, thinking that he or she is a noble and wise person. The patient also loves to

laugh and sing and create merriment, and is always in perpetual motion. As for *dian*, at the onset of the illness, the patient is very unhappy and stares blankly ahead in a catatonic state.³⁰

The Han period (206 B.C.-265 A.D.) saw another major advancement in Chinese medicine. Through the efforts of such great physicians as Zhang Ji 張機 (born 200 A.D.?), Chinese medicine became more systematized and diagnoses based on clinical observations became firmly established as standard medical procedure. Zhang Ji's major contribution to the understanding of disease etiology is his discourse on the diseases of "acute fever" (*shanghan* 傷寒) in which he attributes "heat" as a major cause of many illnesses, including insanity. For example, Zhang believed that if a woman develops a fever during her menstrual period, it is likely that her uterus will be invaded by "heat." As a consequence of the invasion, the woman--although she may be clear in mind during the day--becomes drowsy by evening and babbles incessantly as if she were possessed by a ghost. Fortunately, this is believed to be a temporary illness, because once the invading heat is discharged along with the menstrual blood, the woman will recover.³¹

Another great physician of the Han period was Hua To 華佗 (died 208 A.D.). He was a maverick physician, showing more interest in surgery than any of his contemporaries or predecessors. He may also be one of the first practitioners

of Chinese medicine to employ a non-herbal approach to treating insanity. In his discourse on *diankuang*, he points out that there are many manifestations of the illness, some of which seem to be polar opposites. Persons suffering from this illness may love to sing and laugh, or they may weep uncontrollably; they may run about here and there, aimlessly, or they may simply stay put and spend their time moaning and groaning; there are those who deprecate themselves and there are those who think that they are the greatest. He recommends that the best cure for such an illness is to allow the patients to do as they please. If their needs and desires are satisfied, the excessive yang in their systems will be dissipated and they will recover without fail.³²

The next epoch in Chinese medical history is the period spanning the Jin, Sui-Tang, and Five Dynasties (265-960 A.D.). This period saw the infusion, or rather, the re-introduction of Taoist elements into Chinese medical concepts. Su Simo 孫思邈 (581?-682), one of the greatest medical theorists of this period, was also an avid alchemist who tinkered with the production of the elixir of life. In one of his later works, he even professed a belief in the efficacy of Taoist charms and chants. In his more orthodox medical treatise, *Qianjin yaofang* 千金要方 (Prescriptions Worth a Thousand), he includes a long list of what he considers typically insane (*diankuang*) behavior: 1) refusal to talk or to make any sound, 2) continuous chatter,

3) uncontrolled singing and/or laughing, 4) sitting or sleeping in gutters or ditches, 5) drinking and eating excreta and other filth, 6) baring one's naked body, 7) roaming aimlessly day and night, and 8) cursing people. Most of these manifestations of insanity have already been described by earlier physicians, but Sun's explanation of the cause of *diankuang* is typical of his period. He attributes the cause of the illness to what he calls *xie* 邪 (evil wind). If the evil wind enters the yang system of the body, it will produce an excess of yang and the resultant illness will be *kuang*. Conversely, if the evil wind enters the yin system, *dian* will be manifested.³³ The idea that insanity can be caused by evil winds was also held by another noted physician of the period, Chao Yuanfang 巢元方 (active 605-616?). In some respects, Chao was even more overtly religious than Sun Simo. For example, in his treatise, *Jubing yuanyou lun* 諸病源候論 (Treatise on Symptoms of Various Illnesses), he identifies a type of insanity that he believes is caused by possession.³⁴

During the Sung and Yuan periods (960-1368), the trend shifted away from references to evil winds and supernatural powers. Instead, medicine was once again strongly colored by the concept of *wuxing* 五行 (Five Evolutive Phases).³⁵ It was during this period that the most elaborate explanation of insanity, in terms of *wuxing*, was developed. For example, the physician Liu Yuansu 劉完素 (born

1110) combined the concepts of yinyang and *wuxing* to explain why *kuang* persons have the propensity to curse people indiscriminately, regardless of their position or status. In his treatise, *Hejian liushu* 河間六書 (The Six Books of Hejian), Liu asserts that fire is a bad force or energy, because while water nourishes metal, its "mother," fire is harmful to its mother, wood. When yang is redundant and yin is deficient, as in the case of *kuang*, fire is dominant, overpowering water. The heat thus generated makes the patient lash out at others, regardless of their status. ³⁶

Another noted physician of this period was Zhang Congzheng 張從政 (1156-1228). Zhang frequently opted for the psychological approach to treat his patients. For example, he was once called upon to treat a woman who had suddenly lost all her appetite for food. Moreover, she had frequent screaming fits and was also dangerously violent. She tried all kinds of medicine but none seemed to help; as a last resort she turned to Zhang Congzheng, who was widely known for his unorthodox treatments. On the first day of the treatment series, Zhang ordered two female assistants to dress up in an outlandish fashion and sent them on to his patient. When the sick woman saw the two weirdly-dressed assistants, she burst into laughter for the first time in many months. The next day, Zhang again sent his two assistants to see his patient, this time disguised as animals. Once again, the sick woman laughed heartily. On

the third day, he engaged for the patient to witness his two collaborators wolf down an exquisitely-prepared meal. Tempted by the sight, the patient recovered her long-lost appetite for food. After several more days of similar conditioning, the woman recovered from her long illness. ³⁷

Zhu Zhenheng 朱震亨 (1281-1358), the great Yuan dynasty physician, accepted and elaborated Liu Yuansu's theory that fire is a bad force. He pioneered the theory that the human body houses a kind of energy called *xianghuo* 相火 (literally, ministerial fire) which can become harmful when it is aroused by emotions or passions. Applying this concept to his study of insanity, Zhu postulates that fire, when ignited by anger and desire, can cause the *kuang* form of insanity. Also, the fire that is fanned by such emotions as joy, desire, apprehension, fright, worry, and sorrow can cause *dian* to be manifested. In his opinion, insanity caused by the seven passions cannot be treated medicinally. Instead, he recommends that the passions themselves be exploited to effect a cure. He proposes that anger can be combated with worry and apprehension, joy can be counterbalanced with apprehension and anger, worry can be effectively fought with joy and anger, desire can be opposed by anger and joy, apprehension can be counteracted with desire and worry, fright can be combated with worry and apprehension, and ³⁸ sorrow can be neutralized by apprehension and anger.

Zhu Zhenheng's concept of insanity as an emotion-

induced illness gained many adherents during the Ming and Qing periods (1368-1911). It is very probable that the link between emotion and insanity contributed to the view that insane persons were potentially dangerous. Certainly, beginning with the Ming period, references to the use of physical violence by insane persons began to appear in some discourses on insanity. Dai Sigong 戴思恭 (1324-1405), a Ming physician who once studied under Zhu Zhenheng, added "hitting people" to the list of stereotypically insane behavior: staring blankly and fixedly, cursing people with foul language, scaling rooftops, and running around without any clothes on. Dai also identified a new illness which he called *xinfeng* 心風 (literally, heart-wind). According to him, *xinfeng* is a mild form of *dian* and is manifested by such symptoms as an inability to concentrate, vacillation between joy and anger, and taciturnity punctuated by occasional wild or incoherent utterances.

Li Ting 李挺, who was active during the late-Ming period, was heavily influenced by both Zhu Zhenheng and Dai Sigong. His discourse on *dian* echoes Zhu's theory that the illness is caused by certain emotions, but he also adds that the illness is common among those whose ambitions have been stifled. He describes a *dian* person as one who suddenly reverses his or her usual behavior. One who is usually talkative becomes taciturn; one who is normally quiet becomes cantankerous. In severe cases of *dian*, the

the patient becomes incoherent, or loses control of his/her emotions. In his opinion, *dian* persons are not dangerous,⁴⁰ but those afflicted with *kuang* are potential murderers.

The Ming period also saw the rise of a school of medical thought, commonly referred to as "warmth restorists," that propounded the theory that illness is usually the result of heat deficiency in the body. Thus, instead of using purgatives to rid the patient of heat, the adherents to this school advocated the opposite treatment: using medicines which restore heat to the system. One of the most prominent figures in this school was Zhang Jiebin 張介賓 (1563-1600), the author of the famous treatise, *Jingyue chuanshu* 景岳全書 (The Complete Works of Jingyue). Zhang's discourse on insanity reflects his general theory of illness. Specifically, he warns of the danger of recognizing *diankuang* as a single illness, because *dian* and *kuang* are so different that medicines which cure one may aggravate the other. In his section on *dian*, he expressly warns against using purgatives too freely. In his opinion, *dian* is not a manifestation of an overactive fire in the patient's body. Thus if a physician blindly uses a purgative to treat *dian* without first investigating its real cause, he may seriously⁴¹ injure the health of his patient.

Although the warmth-restorists did not fade with the Ming dynasty, their dominance in the field of medicine was seriously challenged by another school that emerged during

the Qing period. This new school, referred to as "heat purgists," emphasized the importance of purgatives, both in maintaining good health and in combating illness. Many of the prominent physicians of the Qing period were adherents to this school of thought.

The early-Qing physician Chen Shiduo 陳士鐸 (n.d.), best known for his work on women's ailments, also wrote extensively on the subject of insanity. In his treatise, *Shishi bilu* 石室秘錄 (Secrets of the Stone Room), he describes *kuang* patients as hot-tempered and murderous. Also, their minds are so befuddled that they cannot recognize even their own children.⁴² Chen also discusses two unusual kinds of insanity in his treatise: *huadian* 花癲 (literally, flower madness) and *ai* 呆. He believes that *huadian* is a pathological outcome of unrequited love and is manifested only in women. According to him, a woman who is afflicted with *huadian* loses her sense of propriety or shame, she thinks that all men are her lovers and grabs any man whom she happens to encounter and refuses to let go of him. The patient can be cured if she is given, by force if necessary, a concoction of herbs⁴³ which quenches the "fire" that is raging inside her.

Although the usual meaning of *ai* is idiocy, Chen describes an *ai* person as one who is erratic in his waking and sleeping habits. He may sometimes forsake sleep for several days in a row, or, conversely, sleep continuously for many days without waking. He likes to sew tightly together

the garment he is wearing so that it is impossible to take it off without ruining it. He also has a habit of stealing other people's things and hiding them in a secret place. When talking with people, he often lapses into silence and his mind tends to wander. But when he is by himself, he mumbles endlessly and he tends to sob quite frequently. It is difficult to feed him well because he refuses to eat any food that is offered him but he delights in eating charcoal. Chen believes that *ai* is caused by pent-up phlegm, thus he proposes that the patient be given a brew that can dissipate the phlegm. His scenario for the proposed course of treatment is as follows:

First, coax the patient into drinking about half-a-bowl of the brew. This may be difficult but Chen suggests that a piece of charcoal, offered along with the medicine, will usually do the trick. Later in the day, the patient is to be given another half-bowl of the brew, this makes him drowsy, and in no time, he falls into a deep slumber which may last several days. While the patient is asleep, his complete wardrobe, his blankets, and even his mattress are to be removed and burned. When the patient awakes from his deep sleep and notices that all his possessions are gone, he becomes very upset, but his outburst should be ignored. Instead, he is to be given another dose of the brew. Chen warns that the patient may refuse to drink the medicine, so it may be necessary to enlist the help of a strong person to

force the medicine down his throat. Naturally, the patient reacts angrily to this rough treatment, but his anger only makes him drowsy and he falls asleep again. When he wakes up a few hours later, he may rant about ghosts and demons, and if this should happen, he can be humored by being told that so-and-so has already chased the demons away and that there is no need for him to worry anymore. Upon hearing⁴⁴ these reassuring words, he recovers from his illness.

Perhaps because *kuang* is associated with an excess of yang, it is not uncommon to find references to the voracious sex appetites of men suffering from this form of insanity. The following case is an example: "X" had been suffering from *kuang* madness for over seven years when his family finally hired the noted Qing physician, Wu Jutong 吴鞠通 (1736-1820), to treat him. When Wu saw his patient for the first time, he was shocked at the sight: X was stark naked, and his wasted body was completely covered with grime. Although his hands and feet were chained and fettered, he still managed to smash everything he could lay his hands on. Besides being very violent, X also had an insatiable sex appetite, demanding to have sex with a woman every single day. In order to keep him from screaming and wailing at the top of his voice whenever he felt the need for sex, his family had no choice but to force his concubines to satisfy his needs. Wu concluded that X had too much yang in his system, so he prescribed an extremely bitter medicine

that purged the heat from X's body. This treatment was
⁴⁵
 effective and X recovered from his insanity.

The use of herbal medicine was by far the prevalent method of treatment of insanity. The kind of herbs used was largely determined by the physician's understanding of the nature of the illness. During the Qing period, there were essentially two medical approaches to the treatment of insanity: one using warmth-restoratives, the other using heat-purgatives. The rivalry between these opposite schools of thought was so intense that both sides never missed an opportunity to point out the deficiencies of the other. Also, since statistics on success rates were non-existent, both sides could claim a monopoly on successful cures. The following case history from the records of another famous Qing physician, Wang Mengying 王孟英 (mid-nineteenth century), serves as an example of medical rivalry.

Old man Li, when he was in his seventies, expressed a desire to acquire a concubine. Because of his advanced age, his family dared not acquiesce to his desire. Old man Li was so frustrated that he eventually became mad (*kuang*). The family hired a succession of physicians to treat him, but because they all used warmth-restoratives, the old man's condition only worsened. Finally, I was asked to attend to the old man.

The old man's pulse was extremely strong. His face was flushed, and he drooled uncontrollably. His physical strength was just like a young man's. I explained to the family that the old man's problem was caused by an overabundance of yang. The other physicians had failed to realize that a man over fifty years of age naturally loses his yin essence first, leaving him with an excess of yang. As with all things in nature, fire rages when yin is exhausted. I prescribed some "cooling" medicine for the old man, and I also ordered the family to give him huge quantities of pear juice, a natural coolant.

All my effort was for naught, because someone gave the old man some ginger broth to drink. Consequently, he suffered a relapse. This time, not even I could cure him.⁴⁶

This section has shown that insanity was recognized as an illness as early as the fifth century B.C., when the medical classic, *Huangdi neijing* was compiled. Two major types of insanity were identified: *dian* and *kuang*, each with its own set of causes and manifestations. *Dian* is described in the various medical treatises as a yin illness that is characterized by one or more of the following manifestations: 1) sudden reversal of usual behavior, 2) inability to concentrate, 3) vacillation between joy and anger, 4) taciturnity punctuated by occasional wild or incoherent utterances, 5) melancholia, and 6) catatonia. *Dian* manifestations were not considered dangerous to others. *Kuang*, a yang illness, is characterized by a number of anti-social manifestations: 1) fiery temper, 2) propensity to verbally abuse others, 3) screaming fits, 4) wild laughter, 5) voracious sex appetite, 6) loss of appetite for food, 7) sense of self-importance, 8) hyperactivity, 9) love for climbing up high places, 10) propensity to use physical violence, and 11) loss of rational senses. Both *dian* and *kuang* were portrayed as episodic illnesses, with the patients enjoying moments of normalcy between bouts, or vacillating between manic and depressive phases.

Numerous explanations for insanity were advanced, all informed by contemporaneous developments in medical

knowledge. These explanations shared a common premise: insanity is a physiological illness whose etiology and treatment are no different from any other physical ailment. The most common method of treatment for insanity was with the use of herbal medicines; however, some physicians also employed a psychological mode of treatment.

With a medical tradition as long and rich as that of China's, it is to be expected that any layman's approach to the treatment of insanity should include the services of physicians, although not necessarily as a first resort. If anomalous or strange behavior such as screaming uncontrollably, brooding, or attempting to commit suicide was perceived as manifestations of a physiological illness, physicians would be consulted. However, if such behavior was perceived as manifestations of a supernaturally-induced condition, other modes of treatment would be employed. The following sections detail three popular explanations for insanity.

Possession

The belief in demons and spirits has a very ancient history in China. Such apparitions were believed to dwell in a myriad of abodes: trees, animals, rocks, soil, graves, and so forth. These demons and spirits, when not properly placated, could cause a host of misfortunes for human beings: for example, insanity, chronic illness, suicide, and other

strange phenomena. Coeval with the belief in possession is the tradition of shamanism. Shamans in ancient China were healers as well as priests; in fact, the earliest version of the character for "medicine," *yi* 醫 had the character for shaman 巫 incorporated in it: 醫. The tradition of shamanism has been kept alive in China by religious Taoism.

The Taoist exorcism rite is touted by its practitioners as a symbolic battle waged against the possessing demons or spirits. One of the weapons used is a sword made of the wood of the peach or date tree, upon which a prayer or chant is written. It is said that if the sword is made of wood from a tree that has been struck by lightning, it is especially efficacious. Occasionally, the shaman uses a real sword. Father von der Goltz relates a Peking newspaper report of August 20, 1878, which tells of an exorcism ceremony in which the patient died from the wounds inflicted by the Taoist healer's sword.⁴⁷

The frequent use of the sword during these rites of exorcism, and the generally mysterious nature of these ceremonies, have inspired a number of writers to conjure up fantastic tales about these rites. The following is an abbreviated version of one such tale, collected in the Qing encyclopedia, *Gujin tushu jicheng*.

Once upon a time, there lived in Quanzhou a shaman called Chen Zhai. One day, his services were sought by a man whose son had become insane. The minute Chen saw the boy, he knew that an evil spirit had entered the boy's heart. That night, Chen cut the boy in half and

hung the dismembered body on the eastern wall of the boy's room. The heart was hung from a north-facing beam. While Chen was busy performing exorcizing rites on the heart, a dog sneaked into the room and snatched the heart away. Armed with a sword, Chen ran out of the house to launch a desperate search for another heart. Luckily for him, he came across a dying man who expired shortly after he was discovered by Chen. Chen cut out the man's heart and rushed back to his patient's house. He quickly stuffed the heart inside the chest cavity of the dismembered boy and sewed all the pieces back together. When the boy woke up he did not seem to have been any worse for the experience. Instead, his illness had completely disappeared.⁴⁸

Two especially fearful categories of spirits were ghosts and ancestors, both of whom could cause insanity. The Chinese traditionally believed that the soul of a human being has two components: the *hun* 魂 which is essential to a person's physical and mental well-being, and the *po* 魄. *Hun* is light and ascends to heaven upon a person's death, while *po* is the heavier component and descends into earth when a person dies. Under certain conditions, such as not having descendants to offer sacrifices, dying an unnatural death, dying in a foreign land, or not having a proper burial, the *po* becomes a ghost and returns to the human world to haunt people. The list of calamities that were attributed to ghosts is endless: accidents, death, infertility, all varieties of illness, back luck in gambling,⁴⁹ business failure, and many other miseries. The following story, recorded in the Qing collection of *xiaoshuo*, *Tan yi* 談異 (Discourses on Unusual Happenings) relates an account about a murdered woman whose ghost was responsible for causing

depression and suicidal tendencies in a young woman.

In July of one year, my sister suddenly came down with a high fever. As the fever lingered on she began to act rather strangely, as if she had been dealt a terrible, emotional blow. Some of my servants, being natives of Guangdong and therefore very superstitious, suggested that her illness was caused by a ghost and that I should perhaps consult a shaman. I refused to do so, because I was sure that my sister's illness was of a physiological nature.

However, her condition continued to worsen. One night, she even tried to kill herself. Luckily, she was discovered in the nick of time. Six days later, she tried to kill herself again by jabbing an acupuncture needle into her heart. At first we did not know how to save her, but we finally settled on moxibustion. As we were applying moxa to the wound, my sister's voice suddenly changed to that of another woman. We immediately asked who it was that was speaking through my sister. The voice answered, "My name is Ho. I was killed by the Guangdong bandits who later threw my body into a river. My ghost has been roaming from place to place ever since."⁵⁰

It was noted earlier that ancestors were also considered fearful spirits. Many Chinese believed, and still do, that ancestors can become malevolent and cause harm to their descendants. Emily Ahern, an American anthropologist, noted many instances of alleged ancestor malevolency when she was conducting field work in the Taiwanese settlement of Chinan. In this settlement, it is a well-established fact that the ancestors of the Ongs had barred their descendants from marrying any one named Ngo, because a Ngo woman once put poison in an Ong well. The one and only time this taboo was violated produced a daughter who suffered from periodic spells of insanity. Her affliction was attributed to the anger of the ancestors at the breaking of

the taboo. In another instance, the widow of a man in the Li lineage began sleeping with the elder brother of her late husband shortly after the latter's death, thus upsetting the rest of the family. Shortly thereafter, she lost her senses and tried to commit suicide by jumping into the river. The *dang-ki* 童乩 (shaman) hired to find the cause of her insanity announced that some members of the family had burned a charm in the Li ancestral incense pot, asking the ancestors to punish the woman. To counter this malicious act, the *dang-ki* burned another charm in the pot to pacify the ancestors. The woman reportedly recovered.

The Loss of "Soul"

It was mentioned earlier in the preceding section that the Chinese traditionally believed that the human soul has two components--the *hun* and the *po*. The *hun* was considered essential to a person's physical and mental well-being and to lose it was regarded a very serious matter. This belief found expression in the stories of the famous Qing writer, Pu Songling 蒲松齡. The following is from his collection of macabre tales, *Liaozhai zhiyi* 聊齋誌異.

There once lived a man who wanted very much to become an immortal, so he took up Taoist breathing exercises and worked out every day without fail. After several months of such regimen, he felt that his goal was finally within reach. One day, just as he was about to begin his exercises, he heard a tiny voice telling him that he would become an immortal very soon. To his consternation however, this voice was audible only when

he had his eyes shut, hence he had no way of knowing who was the source of this voice. Finally, he could not stand the suspense any longer, so he decided that the next time he heard the voice again, he would open his eyes just a tiny bit to sneak a look.

One day he finally managed to catch sight of the source of the voice. It was a very ugly man, about three inches tall, who was running in circles around the room. Just then, a neighbor happened to knock on the door and frightened the little creature away. The would-be immortal felt as though his soul had left his body and he subsequently became raving mad. It took him over six months to recover.

When an illness was diagnosed as having been caused by the loss of soul, a seance might be held during which⁵² the medium would be asked to recover the lost soul.

Alternatively, Taoist priests might be called in to perform a⁵³ soul-recovering ceremony.

Retribution for Sins

According to Wolfram Eberhard, the concept of sin-- that is, a violation of a divine code--is not indigenous to China. This concept did not appear in the popular mind until the introduction of Buddhism to China and its subsequent popularization into folk Buddhism. Eberhard claims that folk Buddhism almost immediately brought to China the concept of sin and concomitantly, the concept of punishment of sin. Punishment for sins committed during a person's lifetime was not usually meted out immediately, but the sinner could expect his just deserts after his death. Sometimes however, a person's transgression might be punished

immediately. The following story from the Qing collection of retributive tales, *Guobao wenjian lu* 果報聞見錄 serves as an example.

On the grounds of the Tianningsi temple in Ningbo was a deserted mud cottage where a statue of the deity Guandi 關帝 was housed. One day two young men, taking advantage of the location, committed a homosexual act in front of the statue. The infuriated Guandi lashed out at them, saying, "How dare you defile this temple! You shall die for this!"

Barely able to pull up their pants, the two youths started screaming uncontrollably, attracting a huge crowd to the usually deserted cottage-temple.

The parents of the two youths, upon hearing what was happening, hurried to the statue and pledged that they would arrange for a play to be performed as an atonement sacrifice to the deity. With this pledge, the deity's anger subsided and the two youths finally could stop screaming. However, they remained in a daze for another month.⁵⁴

The sin that occasioned the fit of temporary madness was the homosexual act, aggravated by the fact that it was performed in the presence of Guandi's statue. The concept that homosexuality is a sin might be a Qing development. Van Gulik, for example, has noted that at least until the Qing period, when attitudes toward sex in general became less tolerant, homosexuality was not censured. In many short stories and novels too, the homosexual act is usually treated lightly, as if it were just a passing indulgence.⁵⁵

Another sin, one that is heavily Buddhist, is the taking of lives, even those of animals. The following is yet another tale from *Guobao wenjian lu* which warns its readers what is in store for someone who slaughters animals for a living.

There was once a butcher, the scion of a family that had been in the butcher business for generations, who was so adept with the knife that he managed to secure a good life for both himself and his wife. However, one source of joy was continually denied him, for although the butcher had been married for many years, he was yet to be blessed with a son and heir. On top of this source of disappointment, the butcher inexplicably began to put on so much weight that his neck became hidden in a mass of fat and his eyes were but two sunken holes in his grotesquely fleshy face. In short, he began to look more and more like a pig.

One day, he contracted an illness which caused him to grunt like a pig at frequent intervals. On the seventh day of his illness, he suddenly lost his mind, climbed over a bridge, grunted three times, and then threw himself into the river. His body was never recovered. Shortly after his suicide his wife suffered a miscarriage. Eventually, she remarried, forsaking her husband's lineage forever.⁵⁶

The butcher's punishment was severe indeed. Every conceivable calamity that could befall a Chinese happened to him. He did not have a son to succeed his family name and to offer both him and his ancestors sacrifices. Worse still, his widow remarried, thus denying his lineage of any chance to continue itself. What would happen to the butcher and his ancestors? They were destined to become hungry ghosts who had to roam endlessly in search of food.

Other stories in *Guobao wenjian lu* contain a similar plot: a sudden attack of insanity, followed by suicide. That insanity was posed as an immediate cause of suicide reveals a generally unapproving attitude toward taking one's own life. This attitude was informed by the Confucian notion that one's body is a gift from one's parents, therefore one does not have the right to commit suicide.

Thus suicides were not usually condoned in China. One notable exception to this disapproval of suicide was in the case of a woman who took her own life in order to protect her honor. In such a case, the suicide would be celebrated as a virtuous act.

Attitudes Toward Insane Persons

It is impossible to make any generalizations about traditional Chinese attitudes toward the insane. Much of it depended on the perceived cause of the illness. From the physician's point of view, insanity was simply a physiological illness. Unless the physician himself was persuaded by popular beliefs concerning insanity, he probably would not treat his insane patients any differently from his other patients. As for the lay Chinese, their attitudes were presumably determined by a number of factors, the most important being the *assigned* cause of a person's insanity. A person who was usually on bad terms with the neighbors might have his or her illness attributed to retribution. In such a case, the afflicted person might not be treated with sympathy or understanding. Rather, the response of the neighbors might be one of vicious delight.

Historical materials generally do not contain any data on the livelihood of the ordinary people, let alone their attitudes toward the insane. However, there are a

number of short stories written with the purpose of educating the public not to be too mean to seemingly insane people. The following are two examples.

One day during the Jiaqing period, a plain, peasant woman and her infant son walked into a busy shop to purchase some goods. When it came time to pay the shop clerk, the woman placed her son on the counter so she could count out the money to the clerk. Now, this little boy was absolutely filthy. He was sweaty and all covered with grime and dirt, and his body odor was such that one could lose one's appetite for three days! Anyway, while his mother was busy counting her money, this little kid suddenly let loose his bowels and made a mess of the counter. The smell, too, was absolutely unbearable. The flustered clerk berated the woman for not teaching her kid good manners and ordered her to clean up the mess. The woman smiled and said, apologetically, "It's all my son's fault. Don't worry, I'll just ask him to eat it all up."

True to her words, the woman scooped up the mess with her fingers and fed her son, mouthful by the mouthful. Everyone in the shop snickered at the crazy woman and her stupid kid who seemed to be enjoying himself. Before too long, all that was left of the mess was a few smudges here and there. But the woman, instead of telling the clerk that she was through with cleaning up the mess, stared at the smudges for a little while and then proceeded to lick the counter clean! Only then did she put an end to the whole episode and left the shop with her son in her arms.

When they were out of sight, someone in the shop noticed a strange fragrance that seemed to emanate from the spot on the counter where the mess used to be. Only then did the people at the shop realize that the "crazy" woman was an immortal and that the "son" was actually her gourd.⁵⁷

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Outside the city of Suzhou is a majestic pagoda. No one knows when it was first built but one thing is sure, it was not always so majestic-looking. In fact, centuries of neglect had once rendered it decrepit. By the late-nineteenth century, it was on the brink of collapse. Around this time a strange monk appeared on the scene. His old cassock was in tatters, he walked with a staggering gait, and his speech was no more than gibberish. Everyone living in the area near the pagoda

thought that he was crazy and paid no attention to him when he claimed that he could single-handedly repair the pagoda. After several tentative attempts at convincing these skeptical folks, the monk returned one day with a book of karma and settled himself in front of the pagoda. When passers-by asked him what the book was for, he invariably told them that he was collecting signatures for the pagoda-repair work. He also assured them that no one had to pay a cent for the job. Very soon, he collected the signatures of all the inhabitants in the area, because they all thought that there was no harm in humoring this mad monk. As soon as every one had signed up, the monk disappeared, and no one either saw or heard from him again.

A short while later, a strange thing happened. One morning, no one in the neighborhood woke up to do their chores. A strange silence pervaded the whole area. Only when the sun had reached high noon did the inhabitants gradually awake from their unusually long slumber and stumble outside. They all looked wan and drawn, as if they had just recovered from a serious illness. After checking, they concluded that all had experienced the same, strange phenomenon the night before. When in bed, they all felt a strange, oppressive feeling in their chests. Their bodies felt as if they had suffered a serious injury. Their sleep was more like a coma. Only toward the early morning did they recover their senses, but they were all too tired to get up.

No one knew what had caused this universal malaise among the inhabitants, but from that day on, the dilapidated pagoda acquired a new look, just as if someone had renovated it.⁵⁸

That such stories were written implies that the insane were, quite frequently, the butt of jokes or insults. A number of foreign physicians who lived in China during the early-twentieth century wrote about the "pitiable" condition of the insane in China. Dr. J. L. McCartney, in an article published in the *China Medical Journal*, laments that mental patients constituted a "very helpless class" in China. He writes with undisguised horror that "if the insane were caught doing anything wrong, they were arrested and thrown

in prison and treated as if they were criminals. Those who stayed out of trouble were frequently mocked and laughed at and even stoned by total strangers. He reports that their families also treated them very shabbily, sometimes regarding them as strangers and confining them in a dark room by themselves.⁵⁹

There is no reason to doubt that some Chinese behaved badly toward insane persons. As was noted in the beginning of this section, the attitudes of the average Chinese depended largely on the perceived or assigned cause of the insanity. Among the popular beliefs concerning insanity, there was one that obviously contributed to an unsympathetic attitude--that is, that the illness was somehow a punishment for some kind of moral transgression. The other two popular explanations for insanity--possession and loss of soul--at best engendered only an indifferent response.

This chapter has shown that concepts of insanity in Qing China were informed by two traditions: medical and popular. The former regarded insanity as an illness that could be cured if treated properly, either with the use of herbal medicines or operant conditioning. The latter explained insanity in terms of such beliefs as spirit possession, retribution for sins, and the loss of soul. As in the case of the former, there was also a definite assumption that insanity could be cured. Both traditions

shared the same set of symptom complex of insanity: screaming fits, incoherent speech, melancholia, and other anomalous behavior. A conspicuous feature in both the medical and popular descriptions of insanity is the sudden and unpredicted onset of the condition. It will be shown in the next chapter that this symptomatology was gradually incorporated into the Qing Code by jurists who were charged with the task of formulating laws which accommodated insane behavior.

Chapter Three

Homicide and Insanity in Qing China: A Survey of Laws Concerning the Insane

In 1689 the governor of Shandong submitted a memorial to the Kangxi emperor in which he expressed his concern over acts of violence committed by the insane and those who pretended to be insane. He recommended to the emperor a number of measures which he hoped would prevent future acts of violence committed by those who were genuinely insane and punish those who feigned madness to escape sentencing. Specifically, he suggested that in the future, "insane" killers should be questioned carefully in order to determine if they were genuinely ill; if not, they should be sentenced according to the regular statutes for the crimes they had committed. Witnesses who gave false testimony about their purported illness should also be punished. He also urged the government to require families of insane persons to watch over them carefully; those who were without families should be made the wards of neighbors and the local agents for social control: *xiangyue* lecturers and local constables.⁶⁰

It will be shown in this chapter that the governor of Shandong was only one of a number of Qing provincial

officials who identified insanity as a "law-and-order" problem. Their memorials to the central government concerning the treatment of insane persons eventually convinced the high-ranking officials that insanity was a serious problem. As a result, a number of unprecedented substatutes were enacted. These laws had two basic aims: 1) To isolate the insane from the rest of society so they could no longer pose a threat to others. 2) To recognize violent acts committed by insane persons as crimes and to make provisions for such crimes.

Registration and Confinement of the Insane

Prompted by a recent case of multiple homicide committed by an insane person, the governor-general of Sichuan in 1731 submitted a memorial to the Board of Punishments in which he requested an imperially-sanctioned decree for the mandatory confinement of all insane persons. He himself had experimented briefly with mandatory confinement in the province of Sichuan, but his scheme failed miserably for two reasons. In the first place, the control of insane persons was not a factor in *kaocheng* 考成 (annual evaluation of a magistrate's performance). Thus the magistrates in Sichuan were not motivated to control the insane persons living in their districts. Furthermore, the governor-general did not have the authority to punish those who refused to comply with his confinement order.

Agreeing with the governor-general that mandatory confinement was a timely measure, the Board of Punishments ordered families of insane persons to register them with their magistrates or Banner captains, after which the insane persons were to be confined at home and kept under strict surveillance by relatives. As a goad for compliance with this order, the Board made it known that the relatives and neighbors of insane persons who committed suicide or homicide would be duly punished. Magistrates and Banner captains were also held accountable for the conduct of the registered insane persons living under their jurisdictions.⁶²

The 1731 order was made a statute in 1740.⁶³ However, this statute proved to be useless since it did not outline how registration-confinement should be carried out and how long the insane persons should be immured. Twenty six years later, in 1766, a new statute was⁶⁴ formulated which rectified this shortcoming.

The new law spelled out different procedures for the confinement of insane men and women. Insane men could be turned over to their families only if the authorities who registered them were satisfied that their families had the facilities to keep them locked up at all times. Insane women, on the other hand, were automatically returned to⁶⁵ their families after they had been registered. In order to help families with insane members fulfil their confinement obligations, the government issued them the requisite locks

and fetters. Insane persons who were homeless or whose families were incapable of taking care of them were incarcerated. The exact length of confinement was not prescribed but insane persons were required by this law to remain confined until they had "fully recovered" from insanity. As a family might lie about their insane member's recovery, *ganjie* 甘結 (willing bonds) first had to be obtained from the clan elder, *dibao*, and neighbors before any petition for release could be acted on. Those confined in government jails were less fortunate. They had to remain imprisoned until "several years" after their recovery, presumably because the government was worried that they could not take care of themselves.

An interesting parallel can be drawn between the treatment of repatriated thieves and insane persons during the Qing period. In both cases, the duty of supervision was initially assigned to a relative, usually the father or elder brother, who was liable to be punished should his charge commit an illegal act. Should a parolee thief again, his supervisor-relative was thereupon sentenced to fifty blows with a heavy bamboo. Should an insane person succeed in killing someone or in committing suicide, his or her guarantor was sentenced to a more severe punishment of eighty blows with a heavy bamboo rod.

During the mid-Qing period, the *baojia* headmen and/or *dibao* were recruited as guarantors for paroled thieves

because families were sometimes unwilling to assume responsibility for their felonious relatives out of fear for potential harsh repercussions. Fu-mei Chang Chen cites such a case in her work on the local control of convicted thieves in the eighteenth century. Briefly, a district magistrate in Shandong took pity on a number of convicted thieves who were suffering from sunburn and dehydration. He sent for their relatives and asked whether they would volunteer to be guarantors and thereby ensure the convicts' release from their misery. The relatives however refused, and the felons⁶⁷ eventually died of exposure.

In the case of insane persons however, the registration-confinement substatutes made it mandatory (as opposed to voluntary) for them to be supervised and controlled by family members, neighbors, clan headmen, *dibao*,⁶⁸ and *baojia* headmen.

The registration-confinement law was unenforceable in practice. Logistically speaking, it was almost impossible for such a novel law to be introduced to all levels of society and to all households. More importantly, families with insane members often refused to register their afflicted relatives with the authorities. If they believed that insanity was a retribution for sins committed by their relatives, they might be too ashamed to publicly admit the illness. Since insanity was considered to be a condition that could be successfully cured, it is possible that many

families decided against notifying the authorities of their relatives' affliction because they believed that it was only a temporary condition. Generally speaking, when a family chose to ignore the law, their clan and neighbors would not take it upon themselves to inform the government--they did not want to be formally held accountable for the insane person's conduct.

The reluctance of a family to commit an insane member to confinement is not difficult to understand. Once an insane person was committed, especially in a government jail, it could be very difficult to secure his or her release. The following case will serve as an example.

In 1845 Liu Chaoyuan was committed to prison at the request of his older brother. Six months later, when the older brother suddenly died, Liu's widowed mother sought his release from prison pleading that she was old and had no other son to care for her. The governor-general of Sichuan, to whom the case was forwarded, was sympathetic and conveyed his support for her petition to the Board of Punishments, which had the final say on such matters. He made special note of the fact that Liu had not suffered a relapse during his confinement in prison and that he had never committed a criminal act of any sort. The Board of Punishments did not immediately approve the request. While conceding that there were legitimate reasons for Liu's release from prison, the Board noted that he had been confined for only slightly

more than six months, well short of the "several years" specified by the registration-confinement substatute. The Board ordered the governor-general to ascertain the completeness of Liu's recovery, to assess his mother's ability to control him, and to look into the matter of having a barred room readied for Liu's confinement at home in case of a future relapse. Only when all of the above had been taken care of could the governor-general authorize Liu's release from prison; otherwise he was to be kept in prison for several more years at which time his release would be deliberated again.⁶⁹

The prospect of a lengthy confinement was made even more intolerable by the atrocious conditions of Chinese prisons, called "habitations of cruelty" by many Western observers. The prisons were often overcrowded and typically very filthy. Prisoners often had to buy their own food and firewood from the prison warden who relied on the sale of such items for his livelihood, since he was not paid by the government.⁷⁰ Prisoners whose families could not afford to bribe the warden or to buy them food suffered greatly during their incarceration. In fact, the mortality rate in Chinese prisons was so high that a deadhouse was considered a necessary adjunct.⁷¹ Horror stories about prison conditions no doubt convinced many families to ignore the registration-confinement law.⁷²

The case of Liu Chaoyuan, described earlier, reveals

a fundamental defect in the substatute: those abiding by the law were in effect penalized by having their relatives condemned to long-term confinement at home or in prison. On the other hand, those who took the risk of disregarding the law had a fair chance of not getting into any trouble at all, because there was no provision for punishing those who failed to comply so long as their relatives stayed out of trouble.

Xue Yunsheng, a late-Qing jurist, was very critical of the registration-confinement substatute and he called for its repeal. Xue summarized his objections in his commentary on Qing laws, *Duli cunyi*:

The right to conceal crimes committed by one's father or grandfather is legally sanctioned, [and yet,] the children and grandchildren of an insane person are required by this substatute to inform the authorities of his condition and to keep him locked up [like a common criminal].

The most ridiculous part of this substatute however, is the provision that those who [could not be confined at home] were to be sent to prison and kept there. Why should they be relegated to a miserable life in prison? What crimes have they committed?

This substatute is a product of an irrational fear, stemming from a few isolated cases of homicide committed by insane persons, that all insane persons are potential killers. To punish all because of the fault of one is absolutely irrational.⁷³

As Xue pointed out, the registration-confinement law was an anomalous legal innovation. In the first place it contradicted the age-old Principle of Concealment whereby juniors in a family were forbidden by law to inform on their elders. Secondly, it represented an unwelcome intrusion by the government into what had traditionally been a family

responsibility. Families with insane members were forced to decide whether they should obey a law which could send their relatives to prison where they were certain to suffer privations and even torture. It is not surprising that--faced with such a decision--most families chose not to inform the government of their insane members' affliction. Unfortunately, the decision not to register and chain their insane member sometimes resulted in tragedy for the entire family. For example, in 1816, a man with a history of periodic insanity suddenly went berserk, killing his parents, his wife, and a sister-in-law. His brother later testified that the family had not registered him with the authorities because they were afraid that the officials would send him to prison and thus deprive him of what they considered
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proper treatment and care.

The mandatory confinement scheme was first conceived partly as a crime prevention measure by the early Qing officials who thought that putting the insane out of circulation would put an end to violent crimes committed by them. The program failed because the government did not take into account the unwillingness of the families of insane persons to impose long-term confinement on their afflicted relatives and the reluctance of most people to accept responsibility for the behavior of the registered insane persons. There is also little evidence that the heavily-overworked magistrates gave top priority to confining

all the insane persons in their districts.

In 1908, the Qing government acknowledged the futility of enforcing an impractical law and struck the registration-confinement substatute from the Qing Code.⁷⁵

Insanity and Criminal Responsibility

During the early decades of the Qing dynasty, the government treated insane criminals very leniently, even⁷⁶ killers were set free without trial. Eventually the government adopted a harder line toward insane offenders; however, most crimes committed by them continued to be considered less serious than similar criminal acts committed by sane offenders. This comparatively lenient treatment of insane lawbreakers was a continuation of the time-honored legal policy of treating the insane with clemency. This tradition evolved during the Zhou period when the concept of *san she* 三赦 (three pardonables) was developed to ensure the lenient treatment of offenders who were very young, very old, or *qunyu* 蠢愚 (mentally incompetent). An elaboration of this concept is evident in the Tang Code, on the basis of which relatively light sentences were handed down to those who suffered from *feiji* 廢疾 (incurable diseases) and those who suffered from *duji* 篤疾 (serious illnesses), a⁷⁷ designation that included insanity. As Karl Bünger notes in his article, "The Punishment of Lunatics and

Negligents According to Classical Chinese Law," a basis for this tradition of clemency was commiseration for unfortunate people.⁷⁸ This is especially true in the case of Tang law, as the categories *feiji* and *duji* show.

No exegesis on insanity can be found in the Tang Code or in any of the subsequent dynastic Codes. For the Qing period however, a clue to the rationale behind the lenient treatment of insane offenders can be found in a phrase that appears in almost every case record involving insane felons: *fengfa wuzhi* 瘋發無知, which may be loosely translated as "lacking the capacity to reason or to be aware because of insanity." This phrase was most frequently used to justify the imposition of reduced sentences on insane lawbreakers. The cornerstone of Qing policy toward insane offenders, then, was the belief that such persons should not be punished severely because they were not aware of what they were doing. What did the Qing jurists mean by *wuzhi*? As far as one can determine from the trial records, there was no rigid interpretation of what constituted *wuzhi*. Much depended on the judicial officials' idiosyncratic conceptions of insanity. The following robbery-murder case serves as an explanation of sorts.

One day in 1757, a cattle trader named Zhou Shiliang asked his cousin, Zhou Shihung, to accompany a customer home in order to collect the balance of a bill from him. Zhou Shihung did so and the next morning, he put the money into

two sacks and set off for his cousin's house. Upon passing through a hilly area, Zhou was ambushed by an agitated young man, Wu Liner, who stabbed him about twenty times before fleeing with one of the sacks.

Part way home, Liner stashed 1,000 cash next to a haystack, covering it with an armful of hay before continuing home. At the sight of her blood-smeared, knife-wielding son, the horrified mother hurriedly yanked him into the house, out of the neighbor's view, where she stripped off his stained clothing. Liner seemed oblivious to his mother's frantic activity, but when she began to pull some money out of the sack that he had brought home, he suddenly sprang up, snatched the money back and sprinted out of the house with it.

When Liner's father, Wu Changhua, came home, his wife showed him the stained clothing and money sack. Picking up the sack, he saw the character "Zhou" that was written on it, and realized that his son was in very serious trouble, for he had heard that a man called Zhou Shihung had been found robbed and murdered. However, instead of going to the authorities, he decided to cover up for his son.

In the meantime a neighbor, Wu Ruibi, discovered the 1,000 cash. Taking it home for himself, he ran into Liner, who instantly recognized the money and demanded that Ruibi hand it over to him. At first, Ruibi wanted to turn the money over to Liner, but remembering that he was a bit

unbalanced, decided to keep the money for a while and return it to Wu Changhua at a later time. Because Liner continued to plague him, Ruibi decided that he had better tell Changhua about the money before Liner had the chance to accuse him of theft. Changhua knew, of course, that the money was not his, but he had no choice except to take it because refusing it would have cast suspicions on his son. Nine days later, he realized that the money was simply too incriminating to keep in his house, so he returned it to Ruibi, who did not seem to mind it at all. Eventually rumors about the money and Liner's responsibility for Zhou's murder reached the district magistrate. Liner was arrested and his father was ordered to come forward with the blood-stained clothing, murder weapon, and money sack.

Throughout the trial Liner refused to cooperate with the authorities, maintaining stony silence even when
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tortured. Liner's behavior complicated matters for the magistrate: on the one hand, he was inclined to think that Liner was mad because no sane person could possibly remain unmoved by torture. On the other hand, he doubted that Liner was insane because he reasoned that Liner would not have robbed Zhou if he were really mad. The magistrate finally convinced himself that Liner was not feigning madness and so he recommended a prison sentence for Liner instead of the death penalty. The magistrate's judgment was upheld by his superior, the governor, who forwarded the case to the

Board of Punishments for review.

The Board of Punishments was not convinced that Wu Liner was insane, and a retrial was ordered. Specifically, it wanted the governor to review the following aspects of the case: 1) The robbery. The Board wondered if the robbery demonstrated that Liner was not really mad, because an insane person simply could not "know" the love of money. 2) The matter of the hidden money. The Board doubted that an insane person would have the wit to hide his loot. 3) Liner's instant recognition of his hidden money. 4) His calm disposition when his mother was stripping off his blood-stained clothing. The Board felt that an insane person under similar circumstances would have put up a struggle.

The retrial was essentially an exercise on the part of the provincial officials to reconfirm their original judgments, and they managed to do so quite ingeniously. Regarding Liner's "love of money," the governor replied that if the accused really loved money, he would have taken all the money that Zhou Shihung had with him at the time, not just a fraction of it. Moreover, the governor pointed out, Liner lost most of the loot. Such carelessness with money could only mean that he did not know the value of money.

As for the 1,000 cash that was found by Wu Ruibi, the governor reported that new information provided by Ruibi during the retrial revealed that the money had actually been "abandoned" by Liner. According to the governor, Ruibi

now testified that it was his custom to arrange armfuls of hay to perch at an angle atop his haystacks to serve as a kind of rain shelter. Ruibi offered the speculation that Liner perhaps had absentmindedly thrown the money into one of his haystacks, and that the money subsequently slid to the ground, taking with it some of the precariously-perched hay, which fell on top of it. Although the governor conceded that Ruibi's hypothesis was a bit too far-fetched to be valid, he argued that if Liner had really wanted to hide the money, he would have found a safer place for it, and certainly not near a haystack where it could be discovered easily. The governor also submitted that if Liner "knew" enough to hide his loot, he would certainly have hidden the murder weapon as well, but in fact he flaunted it all the way home.

Concerning Liner's ability to recognize his loot, the governor pointed out that a normal person would have known better than to claim the money, since it was incriminating evidence that could be used against him. Liner's fuss over the money made it even more apparent that he was not aware of what he was doing or what he had done.

As for Liner's alleged calm disposition when his mother took off his blood-stained clothing, the governor admitted that in the rush against time during the first trial, not enough attention had been given to this aspect of the case. He reported that during the retrial, Liner's

mother admitted that he did put up quite a fight and that she actually had to wrestle with him for a while.

One may never know whether the new information submitted by the governor in his second report was factual or fabricated to save his face. The Board of Punishments was evidently satisfied with it and so his original judgment was upheld.⁸⁰

It is probable that *wuzhi* was a legal rendition of the symptomatology of insanity that was shared by both the medical and popular descriptions of insanity. This symptom complex includes: 1) befuddlement, 2) incoherent speech, 3) senseless mutterings, 4) jumping and dancing in the streets, 5) prancing around brandishing a knife, and 6) staring blankly and mutely. The above descriptions of insane behavior appear frequently in records of criminal cases involving insane offenders.

Perhaps because the "repertoire" of officially recognized insane behavior was somewhat stereotyped, many Qing officials found it difficult to determine if a criminal was genuinely insane or simply feigning madness by acting out one or more of the stereotypes. The changes in statutes concerning insane killers (which will be discussed at a later point) were in large part efforts to ensure that even those who succeeded in feigning madness would be punished. Some magistrates weeded out good acting from genuine illness by employing physicians to help them

determine if a criminal was really insane.⁸¹ Since physicians in Qing China had numerous medical treatises to help them diagnose insanity, it was probably thought that they were less likely to be fooled by good acting and were therefore, able to provide the magistrates with more definitive diagnoses of insanity.

Certification of insanity did not automatically guarantee that special consideration would be given to the criminal, because the final verdict depended on the nature of the crimes committed. For example, an insane person who committed treason or even harbored treasonous intentions would not be given lenient treatment, as the following account shows.

One day in 1775, Jin Mouming, the owner of a teahouse in Anqing (the provincial seat of Anhui province), received a small parcel and a letter from a former neighbor who had moved to Jiangxi. The innocent-looking envelope had the words, "kunzhi yuannian" (坤治元年, the first year of the Kunzhi reign) written on it. These were treasonous words, because they implied that the reigning Qianlong emperor had been replaced by another emperor. Fearing implication in a treasonous plot, Jin hurriedly turned in the letter and parcel to his district magistrate who then forwarded them to Fei Congxi 裴宗锡, the governor of Anhui. Fei immediately conducted a preliminary investigation and rushed a report on the incident to the Qianlong emperor. Fei informed the

emperor that the letter was sent by Wang Zuoliang, alias Wang Kunzhi. Wang was a resident of Anqing until the previous year, when he suddenly became insane and was subsequently taken back to his native Jiangxi by his older brother. The letter consisted of four sheets of paper which had some "obstinate" phrases and thirteen names written on them. As for the parcel, it contained nothing more than a few pieces of religious paraphernalia and a couple of pebbles. Fei informed the emperor that he had already sent an urgent request to the governor of Jiangxi asking him to extradict the Wang brothers to Anhui. In addition, he requested the governor to locate and arrest the thirteen persons whose names were listed in Wang's letter.

The Qianlong emperor was extremely displeased with Fei's handling of the incident. First of all, he felt that it was extremely stupid to extradict all the witnesses from Jiangxi to Anhui, because something might happen to them en route to Anhui. Second, he found it inconceivable that Fei had failed to consider the person who delivered the letter as a key witness. Third, he was upset that Fei had imprisoned Jin Mouming who, in his opinion, had not violated any laws. He ordered Fei to reward Jin, out of the official's own pocket, a tidy sum of money. The emperor then fired off a set of instructions to Hai Cheng海成, the governor of Jiangxi. He ordered Hai Cheng to keep every one in Jiangxi and entrusted him with the responsibility of finding out all

the facts of the case. He especially wanted Hai Cheng to look into Wang's charge (scribbled on one of the religious paraphernalia) that a certain financial commissioner with the name of Fei had not been "steadfast" in the performance of his duties. The emperor was curious to know if Governor Fei was the subject of Wang's enigmatic accusation.

While his instructions were on their way to Jiangxi, the emperor received word from Hai Cheng that he had decided, on his own initiative, to detain all the key witnesses in Jiangxi and that he had already begun the process of interrogating all of them. The Qianlong emperor was so pleased with Hai Cheng's performance that he even sent a copy of the memorial to Fei, so that the latter could learn from it. Shortly afterwards, a second memorial from Hai Cheng reached the capital, detailing the results of his investigation.

Hai Cheng confirmed Fei's earlier report that Wang Zuoliang had suddenly become insane a little over a year ago and that his older brother had taken him home to Jiangxi. Hai reported that about two months ago, Wang had somehow managed to escape unnoticed from his barred room at home. After the break out, Wang went to a transportation company where he entrusted his letter and parcel to a boathand who delivered them to Jin Mouming. Hai was certain that Wang was genuinely insane, not only because his neighbors and relatives had all attested to the fact, but also because

Wang's responses to his questions were mostly "gibberish." However, Hai did manage to extract some pertinent facts from Wang. First of all, it was not Wang's intention to frame a charge of treason on the thirteen people whose names were listed in his letter. Second, Wang was not a member of any heretical religious sect. Third, his religious scribblings were not for the purpose of extorting money from people. Fourth, his charge that financial commissioner Fei had not performed his duties well was absolutely nonsense. Hai Cheng concluded that because inventing a new reign name was a treasonous offense, the fact that Wang was insane should not be allowed as a mitigating factor. Thus he recommended the sentence of *lingchi* for Wang; his older brother was given the sentence of immediate decapitation as punishment for his negligence. The Qianlong emperor approved Wang's sentence but he reduced the older brother's punishment to

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decapitation after the assizes.

As to be expected in China, where filial piety was (and still is) a paramount virtue, killing one's parents or grandparents was considered such a heinous crime that even if it was committed in a fit of madness, the insane killer would not be spared the horrible sentence of *lingchi*. In one extreme case (1822), the corpse of an insane man who killed his father was ordered sliced up in public. This extraordinary punishment was carried out because the Board of Punishments felt that although the man was killed on the

spot by his mother, his death alone was not enough punishment for the heinous nature of the crime he had committed.⁸³ The following year, in 1823, another case of patricide committed by an insane man prompted the Board of Punishments to seek permission from the Daoguang emperor to expedite the execution of patricides and matricides. Permission was granted and a circular was issued instructing all provincial officials that henceforth, those who killed their parents or grandparents during a fight would be executed without undue delay. No special consideration was to be given to those who were insane. According to the new procedure spelled out in the circular, at the conclusion of the provincial-level trial, the governor was to send a memorial to the emperor informing him of the death sentence. At the same time, without having to wait for imperial approval, the governor was to order the execution of the condemned killer. This new procedure drastically cut short the waiting period between the conclusion of a case at the provincial level and the actual execution, because the governor was no longer required to wait for imperial approval of his judgment. As the circular pointed out, a shorter waiting period minimized the chance of a killer⁸⁴ dying in prison before the government could punish him.

Qing authorities were just as unforgiving when the victim was an official, as the following case (1870) shows: The magistrate of Cheng district (Zhejiang province) and two

members of his household were killed by Pang Yaxian when the latter burst into the private quarters of the yamen. Reporting the incident to the Tungzhi emperor, the governor of Zhejiang noted that Pang seemed to be insane, for he "uttered crazy things." This assessment was immediately branded premature by the emperor, who subsequently ordered a thorough investigation to determine if Pang had any motives for killing the magistrate and/or whether he had been hired by enemies of the magistrate. The investigation established that Pang was genuinely insane and that at the time of the killing he was "stark raving mad." Ordinarily, an insane person who killed three people belonging to the same household would be sentenced to decapitation after the assizes, but this was not considered an ordinary case by the Qing government. The governor of Zhejiang took a very hard line toward Pang and sentenced him to death by *lingchi*. The Board of Punishments upheld his judgment and Pang was executed in the provincial capital, where he had been held prisoner. Following the execution, his head was transported back to Cheng district for public display at the yamen.

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Generally speaking, unless the crime committed was as heinous as the ones described above, an insane offender was almost always given special consideration. The following sections will trace the evolution of substatutes spelling out punishments for insane killers.

Single Homicide

During the early decades of the Qing dynasty the government treated insane criminals very leniently, even⁸⁶ killers were set free without trial. It was not until 1699 that the Board of Punishments decided to exact from insane killers a fine of 12.42 taels of silver, which was to be turned over to the victim's family as a kind of⁸⁷ burial payment. The registration-confinement statute of 1740 paved the way for more stringent sentences. In 1754, fourteen years after the institution of registration and mandatory confinement, it was decided that insane killers should be imprisoned until one year after their recovery from insanity, so that they could be "saved" from further transgressions. And in 1762, life imprisonment was instituted because Qing officials came to realize that it was almost impossible to determine accurately if a prisoner had completely recovered from insanity and because there was no ironclad certainty that a released prisoner would⁸⁸ not suffer a relapse and kill again. By enacting a law that accommodated the episodic nature of insanity, a characteristic that was well-recognized in the medical treatises, the Qing jurists had, in effect, incorporated existing medical symptomatology into the Qing Code. The intense rivalry between the warmth-restorists and the heat-purgists probably played a role too, by convincing the

Qing officials that there was no effective treatment for insanity.

Life imprisonment was a much heavier penalty than the earlier sentence of burial fine and short-term incarceration, but because it was lighter than the death penalty many officials worried that murderers would feign madness in order to escape execution. Their worry was aggravated by the fact that a majority of "insane" killers regained their sanity shortly after they had been arrested, making their "insanity" highly suspect. In 1802, the Board of Punishments took a long stride toward ensuring that even the "most cunning criminals" would be given the punishments they deserved. At the same time, it gave the registration and confinement law a much needed reinforcement. The Board of Punishments instructed the provincial officials that only prior registration as an insane person could be accepted as an ironclad proof that the killer was genuinely insane. In such a case the criminal was to be given the life-imprisonment sentence. Those who became suddenly insane and thus did not have the chance to register their illness would not be summarily dismissed as imposters, but the provincial officials must obtain affidavits from the victim's family attesting to the accused's purported insanity before the lighter death penalty of strangulation after the assizes could be imposed on the killer. If the victim's family refused to support the criminal's claim of insanity,

the killer was to be given the sentence of decapitation after the assizes. The set of instructions was formally⁸⁹ incorporated into the Qing Code as a statute in 1806.

It is noteworthy that unregistered, insane killers who could support their insanity claims were still sentenced to death, but because the death sentences were to be reviewed again at the assizes, the Board of Punishments probably assumed that the process could eliminate any probability of mistakenly executing those who were genuinely insane.

Some officials felt that the blanket life sentence for killers who were genuinely insane was unfair to those whose victims were their juniors. In 1806, this dissatisfaction was exacerbated by two separate homicide cases which reached the Board of Punishments for review. Both homicides were committed by insane men; one victim was a junior female relative and the other was a daughter-in-law.

The Board of Punishments officials who reviewed these two cases felt that life-imprisonment was too harsh because neither crime was a capital offense. They therefore referred the two cases to the Statutes Commission, where the possibility of amending the existing statutes was deliberated.

The Statutes Commission ultimately decided against amending the statutes to accommodate the two criminals in question and others like them. The Commission reported

that life sentences of insane criminals had been commuted by the emperor only on two previous occasions. The first time was in 1796, when the Jiaqing emperor granted a general amnesty to all criminals. At that time, the Board of Punishments decided for humanitarian reasons to release those insane criminals who were either over seventy years old or who had served more than twenty years of their life sentences. The second occasion was in 1800, when the same emperor ordered an empire-wide "clearing of the prisons." At that time, only those who had spent more than five years in prison were eligible for release. The Commission further pointed out that life imprisonment for insane criminals was a necessary precaution because the "periodic" nature of insanity made it extremely difficult to know with any certainty whether a "recovery" was permanent or temporary. It was, in short, impossible to guarantee that a "recovered" killer would not strike again.⁹⁰

When the death penalty was imposed in 1802 on single homicides committed by insane persons, it was considered necessary because many officials feared that cold-blooded murderers could escape execution simply by feigning madness. Their solution was to sentence all the doubtful cases to death, sparing only those who were obviously and unquestionably insane. This hard line was pursued until 1852, when a new statute guaranteed once more, that no insane person who committed a single homicide would be put

to death. This new law stipulated that killers who remained incoherent after they were arrested and could therefore not testify, were to be imprisoned for a period of two to three years. If, during this period, they regained their sanity, they were to be tried and sentenced to strangulation after the assizes--the same sentence given to those who regained their sanity shortly after they were arrested. In both cases the death sentences were to be reprieved at the assizes, meaning that insane killers who regained their sanity were actually sentenced to life-imprisonment. As for those who failed to recover, they were required by the statute to be imprisoned for life,⁹¹ with no possibility of having their prison terms commuted.

Multiple Homicide

Qing officials were willing to spare the lives of insane killers who committed a single act of homicide because they believed that such criminals should not be punished too severely for crimes which they were not aware of committing. This forgiving attitude was put to severe test whenever officials had to deal with multiple homicides committed by insane persons. During the first century of Qing rule insane criminals who killed two or more persons were not given harsher punishments than those who committed a single homicide. This policy was an exception to the

traditional legal practice of assigning a heavier degree of guilt to criminals who committed multiple homicide, and it became increasingly unpopular with a growing number of Qing officials.

In 1766 a homicide case in which four members of one family were killed by an insane man reached Shi Lijia 石禮嘉, the judicial commissioner of Sichuan, for judgment. The commissioner was personally inclined to sentence the killer to death but his hands were tied: existing laws did not include any stipulation that called for the execution of insane killers guilty of committing multiple homicide. After making sure that the killer was really insane--probably with the help of a physician--the commissioner reluctantly handed down the prescribed sentence: a fine of 12.42 taels of silver and life-imprisonment. Although this case was closed, he was determined to prevent future insane killers from receiving such lenient treatment. He submitted a memorial to the Qianlong emperor asking heavier punishments for multiple homicides committed by the insane.

In his memorial, he conceded the rightness of sparing the life of an insane person who killed one or even two people. However, he argued that this leniency should not be extended to those who killed three or more people, especially when the victims were members of the same family. He suggested that in such cases, consideration

should be given to the fact that so many innocent lives were tragically ended. He also pointed out that in a case where the victims included all the males in a family, an entire descent line could be terminated. In his opinion, the prescribed life-imprisonment sentence was simply too light for so serious a crime. He proposed that in the future, multiple homicide committed by the insane should be made punishable by death.⁹²

The Board of Punishments however, rejected the commissioner's proposal for two reasons. First, the Board criticized the judicial commissioner for emphasizing the number of victims in a homicide case and slighting the crucial point that the killer was insane. If compassion for the victims was a factor, then why exclude homicides with fewer than three victims? Second, the Board pointed out that:

Punishments are to be employed by the state only for the purpose of putting an end to crimes. They are never to be inflicted on those who cannot understand the meaning of punishment.

Insane persons lack the capacity to reason and are not conscious of their actions. Therefore it is difficult to assign any guilt to insane criminals.

We must pardon inadvertent transgressions however grave they might be. It is for this reason that although the Board feels sorry for the victims in multiple homicides committed by insane persons, we have so far refrained from punishing their killers more severely than those who had taken only one life.⁹³

In other words, the Board of Punishments felt that the judicial commissioner's proposal defeated the purpose of punishment. It explained that sentencing one insane

killer to death would not discourage other insane persons from committing homicide because they could not understand the meaning of punishment in the first place. It instead recommended that renewed efforts be made to seek out insane persons and see to it that they were kept under strict surveillance and control.⁹⁴ The 1766 statute that spelled out the details for mandatory registration and confinement was an outcome of this renewed effort to control insane persons.

Although the proposal of the Sichuan judicial commissioner did not receive support from the central government, the issue of making multiple homicide committed by the insane a capital offense did not rest in 1766. Ten years later, one of the Presidents of the Censorate, Cui Yinggai 崔應陽, initiated another round of debate about the matter. Cui proposed that insane killers found guilty of double homicide be sentenced to strangulation after the assizes. He added that these killers should be found "deserving of punishment" at the assizes. In other words, he wanted to make sure that their sentences would not be reprieved at the assizes.

Cui Yinggai's arguments were essentially the same as those of Shi Lijia, the Sichuan judicial commissioner, but he had cleverly asked harsher punishments for double homicide, not triple homicide, thus skirting one of the Board of Punishments' criticisms of Shi's proposal. Also

his status in the central government no doubt lent his proposal more weight than a similar recommendation from a lower official. In any case, the Board of Punishments, in a drastic departure from the position it held only ten short years before, decided that allowing the insane killers to live on in prison with no need to face the ordeal of judgment at the assizes was an injustice to their victims. It explained that although the killers were not aware of their actions, the fact remained that they did kill people with their own hands. However, the Board rejected Cui's suggestion that the killers be summarily found "deserving of punishment," a category that increased the likelihood of execution. It pointed out that only the officials presiding over the assizes had the authority to decide the ultimate fate of a criminal. 95 Therefore, this part of Cui's proposal was out of line.

The position adopted by the Board of Punishments in 1776 marked a significant turning point in the evolution of Qing laws dealing with insane killers. Although Qing officials still assumed that insane persons were not conscious of their actions, they overcame their previous reluctance to sentence such killers to death by rationalizing that "they did kill people with their own hands." This new attitude not only affected multiple homicide committed by the insane, but had ramifications on single homicide as well. As was pointed out in the preceding section, single

homicide committed by the insane was made a capital offense in 1802.

The statute of 1776, a child of this new policy, created new problems for Qing officials. Since it provided for double homicide only, Qing officials had to rely on their own judicial sense whenever they were confronted with homicides with more than two victims. For a period of time officials simply applied the statute of 1776 to other multiple homicides committed by the insane, but this was not a universal practice. Finally, in 1824, the governor-general of Zhili appealed to the Board of Punishments to standardize procedures once and for all so that judicial errors could be avoided. In his memorial, he cited one example of judicial error: in 1809 an insane man who killed three of his distant relatives was beheaded immediately--that is, without the benefit of having his case reviewed during the assizes--because the officials who tried him did not apply the statute of 1776 to the case. The governor-general considered the sentence to be too harsh and he used the "misjudgment" to support his call for a more comprehensive statute dealing with multiple homicide committed by the insane. His suggestions were accepted by the Board of Punishments and were subsequently embodied in the statute of 1824.

The new law signalled another major change in official policy. In 1776 the Board had rejected the

suggestion that insane killers who committed double homicide be catagorized as "deserving of punishment" before the assizes. But when the governor-general of Zhili made the same suggestion in 1824, the Board no longer objected to it and as a result insane killers who committed multiple homicide faced almost certain execution after the assizes. Whether they would be strangled or decapitated depended on the number of victims they had killed and whether the victims were members of the same family. The penalty for killing either two or more unrelated persons or two members of one family was strangulation; and the punishment for killing three or more members of one family was⁹⁸ decapitation.

Although the statute of 1824 practically ensured the execution of the convicted insane killer, it still continued the tradition of giving insane offenders lighter punishments than those who were considered "sane." For example, the usual sentence for killing three members of one family was *lingchi* and confiscation of property, a much more severe punishment than decapitation after the assizes.

Intrafamily Homicides

One of the special features of traditional Chinese criminal law is the explicit support that was given to the

family system and especially to the hierarchical structure that defined the system. Until practically the end of the Qing dynasty, when attempts were made to "modernize" Chinese law, senior members of a family enjoyed a number of legally-sanctioned privileges, often at the expense of their juniors. In crimes involving members of the same extended family, for example, sentences were aggravated or reduced depending on the relative status of the perpetrator with respect to his or her victim.⁹⁸ The only exception to this rigidly-enforced "principle of aggravation" was during the early decades of the Qing dynasty, when insane killers--not including those who murdered their parents or grandparents--were treated with great leniency; this applied even to women who killed their husbands, as the following case shows.

In 1697 woman Zhang was found guilty of beating her husband to death. Although she was known to be insane, she was given the sentence of "immediate" decapitation by the governor of Zhili. Fortunately for her the officials at the Board of Punishments did not approve the death sentence, because although the Qing Code had no provisions for the crime of husband-killing committed by insane women, the Board officials opined that the statute exempting insane offenders from the need to expiate their crimes could also be extended to husband-killers as well. They instructed the governor to ascertain the genuineness of woman Zhang's

illness, a factor which they felt was crucial to the proper resolution of the homicide case.

The governor reported that there was no doubt that woman Zhang was insane: not only did her neighbors and relatives all attest to the fact, but a physician who had once administered to her also verified that she was mad. To support his conclusion, the governor cited an earlier incident which found woman Zhang running naked in public after burning her own clothing. Such behavior was unthinkable for normal people, and it fit neatly the classic description of the *kuang* form of insanity. The governor noted that woman Zhang's illness stemmed from an earlier traumatic experience. The malady was of a periodic nature, recurring only when she was emotionally upset, as was the case on the day she killed her husband, Liu Yuan. The tragedy unfolded when Liu Yuan scolded their son, an act that so enraged woman Zhang that she completely lost control of herself. After a heated exchange with her husband, woman Zhang picked up a brick and battered him with it, fatally wounding him. She would have killed her son too, but fortunately, she was restrained by a neighbor before she could land too many blows on him.

Having now ascertained that woman Zhang was genuinely insane, the governor of Zhili accepted the Board's opinion that the substatute exempting insane persons from the need to expiate their crimes was applicable to woman

Zhang as well. Consequently, she was returned to her family without having to pay any compensation for killing her own husband.⁹⁹

Woman Zhang was a beneficiary of the lenient policy toward insane offenders that was adopted by the early Qing government. Had she been pronounced "sane," her fate would have been very different, because traditional Chinese law was very harsh toward women who did not fulfil their submissive, wifely roles. For example, under Ming and Qing laws, a woman who struck her husband was liable to one hundred blows with a heavy bamboo rod, but the corporal punishment could be redeemed with money. Under Qing laws, a woman who seriously injured her husband would be sentenced to death by strangulation, and one who beat to death her husband would be decapitated. Finally, a wife who was found guilty of murdering her husband was liable to the¹⁰⁰ horrible punishment of *lingchi*.

Woman Zhang's case did not result in the formulation of a new statute that guaranteed similar treatment for other insane husband-killers. For over one hundred more years, insane women who killed their husbands were dealt with on a case-by-case basis, and it is uncertain how many of the convicted women were as fortunate as woman Zhang. However, there is no doubt that, later in the eighteenth century, when the Qing government adopted a stricter policy toward insane killers, a number of them were tried under

the regular statute of "wife beating to death her husband" and were sentenced to death by "immediate" decapitation. This arbitrary treatment of insane women convicted of slaying their husbands was not questioned until 1806, when a particular husband-killing case caught the attention of the Jiaqing emperor.

Woman Li began suffering from periodic fits of madness shortly after giving birth to a son in 1799. One evening in 1806, after the family had finished dinner, her husband retired early to bed but woman Li stayed up to nurse her newborn daughter. She suddenly suffered another fit and, mistaking her sleeping husband to be a black monster, bludgeoned him to death with an iron burner. She regained her senses soon afterwards and remained coherent in both thought and speech throughout the trial. The governor of Fengtian, who tried the case under the statute of "wife beating to death her husband," found woman Li guilty as charged and sentenced her to death by "immediate" decapitation. Both the Board of Punishments and the Grand Secretariat concurred with his judgment, and woman Li would have been executed had not the Jiaqing emperor interceded in her behalf.

Taking great interest in the case, the emperor studied the transcripts carefully and concluded that two mitigating factors should not be overlooked. First, woman Li was not, in his words, "a habitual husband harasser."

Second, she was unquestionably insane. Citing as a precedent a homicide case in Sichuan in which an insane man who killed his elder brother was given the lighter sentence of decapitation after the assizes--subsequently reduced to life-imprisonment--the emperor asked why wives were not accorded the same treatment as younger brothers. In his opinion, the relationship between a wife and her husband was similar to that between brothers. He therefore ordered the Board of Punishments to review their files and to report to him how past cases were resolved.

The Board of Punishments replied that the relationship between a wife and her husband was different from that between two brothers. Whereas a wife had to observe three years of mourning for her husband, a younger brother had only to observe one year for his elder brother. It was therefore impossible to routinely give an insane husband-killer the lighter sentence of decapitation after the assizes. However, the Board reported, the records showed that there were precedents for the commutation of the "immediate" decapitation sentence by imperial action.

The Jiaqing emperor agreed that women who killed their husbands should be beheaded as soon as possible. At the same time however, he felt that women who were insane or who had never before crossed their husbands could be treated more leniently. In an effort to reconcile the seriousness of the crime of husband-killing with his own

feelings of empathy for women like woman Li, the Jiaqing emperor devised a five-step procedure for the handling of such cases in the future. First, the provincial officials were still to try such a case under the statute of "wife beating to death her husband." They were then to forward the case on to the Board of Punishments for routine review. If the Board did not find any fault with the provincial judgment, it would then pass the case on to the Grand Secretariat for further review. After a careful study of the transcripts, the Grand Secretariat was then to write down its opinion about the case, in the form of a memorandum, and then send both the transcripts and the memorandum on to the *jiuqing* 九卿 (Nine Ministries) for yet another assessment. As with all capital cases, the final decision rested with the emperor; he could either uphold the immediate decapitation sentence or reduce it by one degree to decapitation after the assizes. In this particular case, the Jiaqing emperor reduced woman Li's sentence, thereby giving her the benefit of having her conviction reviewed again during the subsequent assizes. 101

The Jiaqing procedure was a compromise between the sexist bias in traditional Chinese law and the Qing policy of leniency toward insane offenders who were genuinely insane. It reaffirmed the age-old view that husband-killing was a much more serious offense than ordinary homicide but, at the same time, it provided a chance for the insane

women convicted of killing their husbands to receive a lighter sentence than that stipulated by the regular statute of "wife beating to death her husband." This five-step procedure was formally made a substatute in 1852.¹⁰²

Unlike their wives, husbands in China traditionally enjoyed a number of legally-sanctioned privileges. In Ming and Qing times, for example, a man could beat his wife without fearing prosecution, as long as he did not seriously injure her. Even then, if she elected not to press charges against him, he would not be held liable for the injury. Under Qing laws, a man who was wounded by his wife had the right to divorce her without her consent, whereas a woman who was seriously injured by her husband could not divorce him without first obtaining his assent. Because of the respect for human life, a husband who was found guilty of beating his wife to death could not escape punishment, but the penalty was only strangulation, whereas the sentence for husband-killing was decapitation.¹⁰³ Given this traditional bias in the husband's favor, it is not surprising that insane men who killed their spouses received more favorable treatment than their female counterparts, as the following cases show.

In 1731 Han Qihun, a man with a five-year history of insanity, suddenly went berserk and hacked his wife to death with an axe. According to the governor's report,

Han was a babbling idiot throughout the trial, making crazy charges about his deceased wife such as accusing her of having an adulterous affair with two other men. These charges were completely unfounded--not only did the two men deny having an affair with Han's wife, but his son and mother-in-law also averred that the accusation was absolutely groundless. Having thus convinced himself that Han was genuinely insane, and therefore not criminally responsible for the death of his wife, the governor ordered Han to give his wife a "decent burial." The Board of Punishments agreed that Han should not be held liable for the death of his wife, and reiterated that because Han was the husband, there was no need for him to pay his wife's family 12.42 taels of silver, the usual penalty for single homicides committed by the insane.¹⁰⁴

Since Han Qihun killed his wife in 1731, at a time when the Qing government was still tolerant of insane killers--short-term imprisonment was not instituted until 1754--it is difficult to say whether his status as the victim's husband was indeed the primary mitigating factor in the case. However, as the government became less tolerant, and the sentences grew harsher, the difference between the treatment of an insane husband-killer and that of an insane wife-killer becomes more obvious. For example, in 1813, eleven years after the introduction of the death penalty for killers who could not substantiate their insanity

claims, Zheng Wenhuan was arrested for killing his wife. Because he exhibited the characteristics of a madman-- blank stares, confused mind, senseless babbling--he was deemed genuinely insane and was therefore not tried under the statute, "husband beating to death his wife." The governor-general of Sichuan pronounced that because Zheng was insane he should not be punished for killing his wife; however, as a safety measure, he should be kept in prison for life. This judgment was upheld by the Board of
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 Punishments.

The difference between the treatment of Zheng and woman Li is obvious. Whereas woman Li was tried under the statute, "wife beating to death her husband," and was subsequently sentenced to decapitation after the assizes, Zheng was declared not criminally responsible for the death of his wife. Although he was given a life sentence, it was not a punishment for what he had done but, rather, a deterrent to potential crimes he might commit because of his dangerous illness. This unequal treatment is, of course, deeply rooted in the hierarchical structure of traditional Chinese families and the legal system that reinforced such a structure. Juniors (wives, children, nieces, nephews, younger brothers and sisters) who violated the persons of their seniors invariably had to pay heavily for having the audacity to do so. This principle of "guilt aggravation" was extended to include even distantly-

related seniors, as the following case shows.

Liu Jinliang, a native of Shandong province, became insane in 1784, but because he seemed to be harmless, his condition was not reported to the district authorities, nor did any one maintain a surveillance over his daily activities. One summer day in 1785, while Liu was cutting grass in his father's fields, he suffered another relapse of his illness but, as usual, no one paid any attention to him. This laxity resulted in tragedy, because in the middle of the night, Liu lost control of himself and, in his raving state, slit the throat of his uncle (his father's third cousin) with a sickle. A rampage would have ensued had not his father snatched the sickle from his hands and put him under restraints. Because he was completely incapable of coherent speech, the officials who interrogated him found it impossible to extract any sensible testimony from him, but they were able to obtain statements from his neighbors, the local *dibao*, and the victim's son. These witnesses all testified that Liu was genuinely insane and that there was no reason to suspect that he had any motives for killing his uncle. Having thus satisfied himself that Liu was not feigning madness in order to escape the death penalty, the governor of Shandong had only one more problem to solve before passing judgment on Liu, that is, the fact that Liu's victim was his uncle. In the end, the governor reasoned that because the uncle was only a *šima* 纒麻 (fifth

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degree) senior, there was no need to give Liu an aggravated sentence. Invoking the statute of 1762, the governor sentenced Liu to life-imprisonment. The governor also ordered Liu to pay his uncle's family 12.52 taels of silver.

The Board of Punishments, however, found fault with the governor's ruling. It disagreed with his assessment that the *sima* relationship between Liu and his uncle was too insignificant to warrant an aggravated sentence. The Board maintained that although the *sima* was a minor mourning degree--it was the lowest degree--it still described a relationship that was based on common ancestry (*tongzong* 同宗). Therefore, it was erroneous to ignore it, as the governor had done in this case. The Board ordered the governor to pass a new judgment, one that would take into account the gravity of killing a senior. The governor did so, sentencing Liu to decapitation after the assizes, a punishment that befitted one who killed his senior. 107

The Liu Jinliang case firmly established the precedent for punishing severely insane persons who killed their seniors, regardless of how distantly-related they might be. For example, in 1792 a Sichuan man was sentenced to decapitation after the assizes for killing his mother-in-law, a *sima* senior by marriage. The governor-general of Sichuan had originally given him only a life sentence, but the Board of Punishments, citing the Liu Jinliang precedent,

ordered him to change his ruling.¹⁰⁸

The policy to severely punish those who killed their *sima* seniors also affected those who slew their stepfathers. In traditional, patriarchal China, stepfathers were accorded a much lower position within the family hierarchy than natural fathers. Whereas sons and unmarried daughters were required to observe a three-year mourning period for their natural father, three months was considered appropriate for their stepfather. However, a person who killed his or her stepfather would still receive an aggravated sentence, because although stepfathers were not *de facto sima* seniors, they were regarded as equivalent in status to *sima*. For example, in 1812 an insane man in Gansu province was put on trial for killing his stepfather and was subsequently sentenced to decapitation after the assizes. The officials at the Board of Punishments upheld the provisional judgment, agreeing with the governor that the customary assignment of *sima* status to stepfathers¹⁰⁹ should be recognized in this particular homicide case.

The first statute to deal with the killing of seniors by their insane juniors was formulated quite late in the Qing dynasty, in 1831. Until then, the officials who presided over the trials of such homicides had only the precedents set by earlier cases to guide them. The statute of 1831 was a complicated law and quite comprehensive, as if the Qing government wanted to make up

for lost time by dealing with all possible contingencies all at once. This law concerned specifically the slaying of *qigong* (second degree mourning) seniors:

He who, during a fit of madness, takes the life of his *qigong* senior; or the life of a senior plus that of a member of the senior's household who is the killer's junior, and for whose death he is not liable to any penalty; or the life of a senior plus that of another, unrelated person, is to be sentenced [to death by "immediate" decapitation]. However, it is possible in the above cases for the judicial officials to submit a request to the emperor asking for the reduction of the death sentence by one degree.

He who takes the life of two *qigong* seniors, whether or not they belong to the same household; or the life of one senior plus that of a member of the senior's household who is the killer's junior, and for whose death he is liable to the penalty of strangulation; or the life of a senior, plus the lives of two other, unrelated persons, shall be sentenced to death by "immediate" decapitation. A petition for reduction of sentence is not allowed in the said cases.¹¹⁰

This substatute, in effect, ensured that insane persons who killed their *qigong* seniors would not receive any lenient treatment--they were to be punished just as severely as those who were not considered insane.

Parole and Amnesty

In 1818 the governor of Jiangsu submitted a memorial to the Board of Punishments requesting permission to grant parole to Hua Zengbao, an insane killer who had been serving a life sentence for killing his neighbor. In the memorial, the governor cited "to continue ancestral sacrifices" as the reason for releasing Hua from prison. Because there

were no provisions in the Qing Code for a case such as this particular one, the governor's request was forwarded to the Statutes Commission for deliberation. Reporting back to the Board of Punishments, the Commission cited two substatutes that spelled out the conditions for granting parole to insane killers. The first law, enacted in 1801, stipulated that a killer who had recovered from insanity could petition for release from prison provided that he met the following conditions: 1) he was an only son, 2) his parents were old and had no one else to care for them, and 3) his recovery from insanity took place while he was in prison. (That is to say, he had remained "insane" throughout his trial.) The second law, formulated in 1814, extended parole eligibility to those who regained sanity shortly after their apprehension. The requisite being that they had already served five years of their prison terms and, of course, their parents were aged and had no sons to take care of them. This law also made it possible for an only son whose parents were already deceased to request parole, but only if he was imprisoned on the relatively minor charge of wife-killing. The Statutes Commission pointed out that because the substatute of 1814 was enacted to provide more prisoners with the opportunity for parole, the five-year prerequisite was absolutely necessary if the cunning designs of "hardened criminals" were to be thwarted. In other words, even if they had succeeded in fooling the authorities with

their fake "insanity," they would still have to spend at least five years in jail.

As for Hua Zengbao, the Statutes Commission was of the opinion that he did not meet the conditions for parole. Since his parents were already deceased, the fact that he was an only son had lost considerable significance, because the only other recourse available to him was to claim the need to "continue ancestral sacrifices." But this was considered legitimate reason only if he had been convicted of the lesser offense of killing his wife. The Commission pointed out that the purpose of the "continue ancestral sacrifices" clause in the Qing Code was actually to spare the life of a condemned criminal and not, as one would be led to believe, to allow the criminal to perpetuate his family line. In the Commission's opinion, there were many ways for a family to perpetuate its decent line, but parents could be adequately cared for only by their adult sons. Therefore, a prisoner whose parents were aged and had no other sons to take care of them had a good reason to petition for release from prison. On the other hand, one whose parents were already deceased did not really have¹¹¹ adequate cause for seeking parole.

Hua Zengbao was denied parole primarily because the Board of Punishments felt that there was no pressing need for him to be free; had his parents been alive, the government would have been much more accommodating. Indeed,

caring for one's parents was considered such an important filial obligation that even one who killed his senior could regain his freedom if he could prove that he was needed at home. The following case will serve as an example.

In 1845 Gao Hu, a native of Henan province who was serving a life sentence for killing his uncle (a second degree senior) during a fit of madness, petitioned for parole so that he could take care of his aged mother. After some deliberation, the Board of Punishments decided in his favor for eight reasons: 1) He had completely recovered from his illness. 2) His father had been dead for more than forty years. 3) His widowed mother was over seventy years old. 4) He was an only son. 5) His original sentence of "immediate" decapitation had already been commuted twice. 6) He had already served more than twenty years of his life sentence. 7) His victim/uncle was not an only son. 8) His
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uncle's three sons did not object to his being released.

The statutes of 1801 and 1814 were products of Chinese ideas on filial piety as well as on ancestor veneration and, as such, were of no use to female criminals who were condemned to life-imprisonment. This is because traditionally, Chinese women were not given any recognized role in either caring for their own parents or in the perpetuation of family lines. The denial to women of two acceptable reasons for parole struck some officials as being unfair. One of them, the governor of Anhui, tried in

1840 to rectify this inequity. The governor had taken an interest in the fate of woman Wang, a prisoner who had already served two years of her life sentence for killing one of her retainers during a fit of madness. Convinced that she had completely recovered from her illness, the governor was of the opinion that she should be freed and returned to her family but, because he did not have the authority to do so, he had to seek permission from the Board of Punishments. In his letter to the Board, the governor brought their attention to the sad fact that many female prisoners, because they could not take advantage of the statutes of 1801 and 1814, all too frequently languished and died in prison while awaiting an imperial pardon--their only chance to be freed. He asked the Board of Punishments to spare woman Wang from this pitiful fate. The Board however, rejected the argument that woman Wang should be freed simply because she, like other female prisoners, could not take advantage of the statutes of 1801 and 1814. The Board pointed out to the governor that the most appropriate sentence for insane killers was life-imprisonment and that the "continue ancestral sacrifices" provision was only an "extra-legal benevolence" (法外之仁). Moreover, the Board was concerned that if they allowed female prisoners to be freed as soon as they had recovered from insanity, they would also have to accommodate those male prisoners who did not qualify for parole--specifically,

those who were not the sole support of their aged or infirm parents. In the end, in order to avoid upsetting the status quo, the Board ruled against the release of woman Wang to her family.¹¹³

Although the governor of Anhui was unsuccessful in his attempt to free woman Wang, his failure did not necessarily mean that she would have to spend the rest of her life in prison. His rhetoric about women languishing in prison was not entirely accurate, because there were other recourses for the commutation of prison sentences. Specifically, the not infrequent general amnesties and the occasional "clear the prisons" (清理刑/獄) edicts. General amnesties were often granted to mark such felicitous occasions as the emperor's accession to the throne, his marriage, his birthday, or other equally auspicious days. They were also proclaimed in response to natural disasters such as earthquakes, famine, drought, or floods; the assumption being that an amnesty might appease the heavens and thus help restore cosmic harmony. Orders to "clear the prisons" were almost always issued during times of calamity in order to right possible miscarriages of justice. In fact, the belief in the connection between calamities and injustice was so strong that in Qing times edicts were issued, almost as a matter of routine, to clear the prisons of most of their inmates when there was drought, flood, or war.¹¹⁴

It is noteworthy that the Qing government, despite its generally lenient policy toward insane offenders, was initially very reluctant to grant amnesty to them. This anomalous policy of exclusion no doubt stemmed from their concern that insane criminals, having proven themselves to be uncontrollably dangerous, would cause harm again if they were set free. In 1796, perhaps to commemorate his accession to the throne, the Jiaqing emperor proclaimed a general amnesty and, as usual, insane prisoners were not included. This time however, the governor of Shandong took pity on them and initiated a petition on their behalf. He wisely did not attempt to secure the release of all insane prisoners. Instead, he pleaded only for those who had served ten to twenty years of their life sentences, as well as those who were over seventy years old. After some deliberation, the Board of Punishments recommended that insane prisoners who were seventy years or older could be released from prison, regardless of the actual number of years they had already been imprisoned. As for those who were under seventy years of age, the Board recommended to the emperor that twenty years of imprisonment should be the minimum requirement for release. The Board's position was approved by the emperor, thus allowing a number of insane prisoners to be freed.¹¹⁵

In 1800 insane prisoners became beneficiaries of a "clear the prisons" edict for the first time. When the

Jiaqing emperor issued the order, he specifically instructed the Board of Punishments to include criminals who were serving life sentences. Presumably because it had the amnesty of 1796 as a precedent, the Board promptly ordered the release of, pending certification of recovery, insane prisoners who had been incarcerated for more than twenty years. The Board also compiled a list of the other insane prisoners and presented the list to the Jiaqing emperor for his adjudication. After examining the list, the emperor ordered the release of all insane criminals who had been imprisoned for five years or more, with the condition that they had fully recovered from their illness.¹¹⁶

The edict of 1800 set the precedent for future amnesties and "clear the prisons" edicts which included insane prisoners among the beneficiaries. There were basically three prerequisites for release: 1) The prisoners had fully recovered from insanity. 2) They had been incarcerated for at least five years since their recovery. 3) The emperor had specifically ordered their inclusion in his edict. Most officials did not have any difficulty with the first two conditions, but a number of them seemed to be completely ignorant of the third. They often assumed that insane prisoners were automatically included in each and every pardon. Despite repeated reminders from the Board of Punishments, many officials continued to routinely forward the names of insane prisoners held in provincial

jails, regardless of whether they had been included in the particular proclamation of pardon.

For most prisoners in Qing China, there was yet another recourse for release from prison. Occasionally, the emperor would issue a proclamation granting reduction of sentences. Such proclamations usually resulted in the reduction of the original death sentences of the inmates to exile. Insane killers serving life sentences were also eligible for sentence reduction; however, as in the case of amnesty or pardon, they must first meet the requirement that five years had elapsed since their recovery from insanity before they could actually be sent to exile.¹¹⁷

This chapter has shown that during the late-seventeenth and early-eighteenth centuries, a number of provincial governors identified insanity as a serious law-enforcement problem. As a result of their memorials to the central government recommending tighter supervision of insane persons, statutes requiring the mandatory registration and confinement of insane persons were enacted. Mandatory confinement of all insane persons was subsequently followed by the introduction of short-term prison sentences for insane killers. When the officials later recognized the intermittent nature of recovery, they instituted life-imprisonment, not to punish the criminals but to prevent them from killing again in the event of a relapse.

The death penalty was eventually imposed for

multiple homicides committed by the insane but only after much rationalizing. When single homicide was made liable to the death penalty in 1802, it was out of fear that cold-blooded murderers might conceivably exploit the more lenient homicide law by feigning madness. All suspected frauds were sentenced to death, and only those killers who were obviously and unquestionably insane were spared capital punishment. In 1852 however, life-imprisonment was once again the standard penalty for single homicide, possibly because the Qing government was concerned that genuinely insane killers might be executed by mistake.

A number of statutory recourses were made available to insane prisoners to spare them from the horrible fate of life-imprisonment. Only-sons could petition for release in order to serve their aged parents, while others became eligible for the commutation of their sentences as a consequence of general amnesties, occasional decrees to "clear the prisons," and proclamations for reduction of sentences.

There were exceptions to the overall policy of leniency toward insane offenders. *Lingchi*, the harshest death sentence, was handed down to all individuals found guilty of committing treason, patricide, matricide, and killing an official. Also, insane persons convicted of killing their seniors were sentenced according to the regular statute for killing one's seniors. These exceptions

underscore the primacy of state and family in Qing China.

TABLE I
Penal Cases Involving Insane Persons Used in This Study

Date	Status	Sex	Offense	Victim	Penalty	Remarks	Probable Penalty if sane
1. 1697	commoner	F	homicide	husband	none		immed. decap.
Enactment of 1699 substature for single homicides committed by insane persons: 12.42 taels of silver							
2. 1703	commoner	F	homicide	mother-in-law	decap. after assizes	<i>lingchi</i> commuted to decap. by emperor	<i>lingchi</i>
3. 1731	commoner	M	multiple homicide	4 of another family	12.42 taels 4 times	prompted call for mandatory confinement	<i>lingchi</i> + confiscation of property
Issuance of 1731 order mandating registration and confinement of insane persons							
4. 1732	commoner	M	homicide	wife	confinement at home		none
5. 1735	commoner	M	homicide	no relation	12. 42 taels		strangulation after assizes
Enactment of 1740 substature mandating registration and confinement							
6. 1753	commoner	M	multiple homicide	4 of another family	12.42 taels 4 times		<i>lingchi</i> + confiscation of property
Enactment of 1754 substature for single homicide: short-term imprisonment							
7. 1756	commoner	M	homicide	brother	decap. after assizes		same
8. 1758	commoner	M	robbery homicide	stranger	12.42 taels + imprisonment		decap. after assizes

9. 1759	commoner	M	homicide	younger <i>daqong</i> cousin	strang. after assizes	insanity plea not accepted	same
10. 1760	commoner	M	homicide	mother's step- son's wife	strang. after assizes	insanity plea not accepted	same
<u>Enactment of 1762 substature for single homicides: life-imprisonment</u>							
11. 1766	commoner	M	multiple homicide	4 of another family	12.42 taels 4 times	prompted Sichuan official to call for death penalty for multiple homicides	<i>lingchi</i> + confiscation of property
<u>Enactment of 1766 registration-confinement substature: details spelled out</u>							
12. 1786	commoner	M	treason		<i>lingchi</i>		same
<u>Enactment of 1776 double homicide substature: strangulation after assizes</u>							
13. 1786	commoner	M	homicide	<i>sima</i> elder	decap. after assizes		same
14. 1789	commoner	M	multiple homicide	5 unrelated persons	strang. after assizes	Gov.'s request for immed. decap. denied by emperor	immed. decap.
15. 1789	commoner	M	multiple homicide; assault	killed sister-in-law, nephew, neighbor wounded father	immed. decap.		same + exposure of head?
16. 1792	commoner	M	homicide	mother-in-law	decap. after assizes		same
<u>1802: strangulation after assizes penalty for single homicides committed by insane persons</u>							
17. 1805	commoner	M	homicide	<i>sima</i> elder	decap. after assizes		same

18. 1805	commoner	M	homicide	no relation	strang. after assizes	death penalty reduced by emperor; to be effected after recovery	strang. after assizes
19. 1805	commoner	M	homicide	no relation	strang. after assizes	ditto	strang. after assizes
20. 1805	commoner	M	homicide	no relation	strang. after assizes	ditto	strang. after assizes
21. 1806	commoner	M	stealing exposed, decapitated head		exile	emperor insisted insanity should not be mitigating factor	exile
22. 1806	commoner	M	homicide	female junior relative	life term	life imprisonment only as preventive detention	exile
23. 1806	commoner	M	homicide	daughter-in- law	life term	ditto	exile
24. 1806	commoner	M	false accusation		confinement at home		military exile
25. 1806	Bannerman	M	false accusation		sent back to Banner for confinement at home		?
26. 1806	commoner	F	homicide	husband	decap. after assizes	emperor reduced immed. decap.; devised 5-step procedure	immed. decap.

1806: 5- step procedure for handling husband-killing committed by insane women

27. 1808	commoner	M	homicide	<i>sima</i> elder	decap. after assizes		same
28. 1809	commoner	M	multiple homicide	3 kinsmen	immed. decap.	the statute 'beating to death 3 of a family' was applied	same or even <i>lingchi</i>
29. 1809	commoner	M	multiple homicide	wife, son	strang. after assizes	commuted to life- imprisonment	strang. after assizes
30. 1810	commoner	M	homicide	wife	life imprison- ment (incoherent during trial)	released in 1819 to continue ancestral sacrifices	none?
31. 1811	commoner	M	reg. & conf.		recovered in 1813 but not released at the time; prison attacked by "heretical sects" in 1815; escaped from prison but turned himself in shortly afterwards. Board of Punishments released him after determining that he was not a heretic.		
32. 1811	commoner	M	multiple homicide	neighbor & neighbor's daughter	strang. after assizes		immed. decap., exposure of head
33. 1812	commoner	F	homicide	husband	immed. decap.		immed. decap.
34. 1812	commoner	M	homicide	stepfather	decap. after assizes		same
35. 1813	commoner	M	homicide	daughter	life-term	statute, "killing children without any good cause."	100 blows

36. 1813	commoner	M	homicide	wife	life term	applied "killing wife by accident" statute	none
37. 1813	commoner	M	homicide	younger brother	failed to recover: life-imprisonment	died in prison	100 blows + 3 years exile
38. 1813	commoner	M	breaking & entering		killed		
39. 1814	commoner	M	multiple homicide	younger brother's wife, niece	strang. after assizes		immed. decap.
40. 1816	commoner	M	assault	aunt	strang. after assizes		immed. strang. or same
41. 1816	indentured servant	M	multiple homicide	master + one other person	immed. decap.		same
42. 1817	commoner	M	multiple homicide	parents, wife, sister-in-law	<i>lingchi</i> with extra slices + exposure of head		same
43. 1817	commoner	M	homicide	no relation	strang. after assizes	he was delirious from fever; B. of P. applied insanity substatute	same
44. 1817	commoner	M	assault	no relation	80 strokes + 2 years imprisonment + 5.32 taels		same
45. 1818	commoner	M	multiple homicide	uncle, own wife	immed. decap.	commuted to decap. after assizes	immed. decap.

46. 1818	commoner	M	homicide	neighbor	life term	remained incoherent throughout	strang. after assizes
47. 1821	commoner	M	false accusation	enemy	life term	single homicide substature applied by analogy	military exile
48. 1822	commoner	M	homicide	father	killed by mother; corpse ordered mutilated in public		same
49. 1823	commoner	M	homicide	father	<i>lingchi</i>	prompted new procedure	same

1823: Board of Punishments devised new procedure allowing summary execution of patricides & matricides

50. 1824	commoner	M	homicide	uncle's creditor	died in prison (failed to regain sanity)		strang. after assizes
51. 1824	commoner	M	multiple homicide	4 persons	decap. after assizes	gov. called 1809 case "misjudgment"; suggested new amendments	immed. decap.

Enactment of 1824 multiple homicide substature: decap. after assizes, to be found "deserving of punishment."

52. 1826	commoner	M	homicide	no relation	life term	failed to recover	strang. after assizes
53. 1826	commoner	M	assault	<i>dagong</i> cousin	100 blows + 2,000 <i>li</i> exile	commuted to 12.42 taels	100 blows + 3,000 <i>li</i>
54. 1826	commoner	M	commandeered a donkey; rode the donkey "wildly" down a public street		imprisoned because family did not have facility to keep him locked up at home		
55. 1827	commoner	M	assault	uncle	strang. after assizes		immed. strang.

56. 1828	commoner	M	homicide	<i>sima</i> elder	decap. after assizes	same
57. 1830	Bannerman	M	assault	Banner captain	12.42 taels + imprisonment	length of prison term ? not specified
58. 1831	commoner	F	homicide	daughter-in-law	100 blows + 3 yrs. exile. Penalty redeemed with money; eventually sent home for confinement at home	same but no confinement
<u>Enactment of 1831 substature for killing second degree seniors</u>						
59. 1832	deputy magistrate	M	forging seal of another official		dismissed from civil service; life imprisonment at native place	dismissal
60. 1833	commoner	M	false accusation		life term with stipulation that he would not be eligible for parole	military exile
61. 1840	commoner	M	homicide	former employee	life term	100 blows + 3 years exile
62. 1841	commoner	M	homicide	no relation	strang. after assizes	same
63. 1841	commoner	M	homicide	no relation	strang. after assizes + petition from gov. that he will released 5 years after recovery to care for his aged parents. (Released in 1849.)	strang. after assizes but commuted to take care of parents
64. 1843	commoner	M	homicide	son	short-term imprisonment; may be released five years after recovery	none?
65. 1843	commoner	M	homicide	natural father's adoptive mother	final decision unknown	
66. 1845	commoner	M	committed to prison by brother because of insanity.			

67. 1846	commoner	M	homicide	brother's child-bride	life term. Crime probably committed in 1820. Case came up for reduction review in 1846. Release approved.	?
68. 1848	commoner	M	homicide	no relation	strang. after assizes	death sentence repeatedly commuted; released in 1848 after more than 20 years in jail; either sent to exile or sent home strang. after assizes
69. 1849	commoner	F	homicide	stepson	imprisonment	released in 1849 after more than 5 years in jail; failing eyesight cited as reason for parole le
70. 1852	commoner	M	assault	older brother	imprisonment	crime committed years earlier; released in 100 blows 1852 because no relapse for more than 5 years 3 yrs. exi.

Enactment of single homicide substitute of 1852: defer trial 2 to 3 years

Enactment of substitute for husband-killing committed by insane women: codification of 1806 procedure

71. 1853	commoner	M	homicide	stepson	imprisonment; to be released 5 years after recovery	100 blows
72. 1853	commoner	M	homicide	Taoist priest/ landlord	sent back for retrial	
73. 1854	commoner	M	homicide	stranger	sent back for retrial	
74. 1854	commoner	M	assault	<i>xiaogong</i> elder	imprisonment	crime committed years earlier; request for parole in 1854 denied, because recovery too recent exile

75. 1854	commoner	F	homicide	husband	immed. decap.; commuted to decap. after assizes by emp.	Because of unrest in Shandong, all death sentences were commuted in 1858; sent home	immed. decap.
76. 1857	commoner	M	multiple homicide	wife, sister- in-law	strang. after assizes	judged "deserving of punishment"	same
77. 1858	commoner	M	homicide	<i>dagong</i> cousin	immed. decap.; commuted to decap. after assizes; further commuted to life imprisonment with no chance for parole		immed. decap.
78. 1859	commoner	M	homicide	accupuncturist	life term	original injury not fatal	exile
79. 1860	sergeant	M	homicide	deputy	imprisonment	can be released after 5 years	strang. after assizes
80. 1867	commoner	M	homicide	wife	life sentence but with condition that he could be released 5 years after recovery to serve parents		no imprison- ment
81. 1868	commoner	M	multiple homicide	2 unrelated persons	strang. after assizes; commuted to life sentence		strang. after assizes
82. 1868	commoner	M	gang rape	Banner woman		sent back for re-investigation	
83. 1868	prisoner	M	homicide	cell mate	trial deferred two to three years pending recovery; if fail to recover, life imprisonment		strang. after assizes?
84. 1870	commoner	M	multiple homicide	wife's relatives	unknown		decap. after assizes

85. 1870	commoner	M	homicide	wife	strang. after assizes	reduced to exile in 1870 because of recovery	strang. after assizes
86. 1870	commoner	M	multiple homicide	2 unrelated persons?	strang. after assizes		decap. after assizes?
87. 1870	barber	M	multiple homicide	magistrate + 2 others	<i>lingchi</i> + exposure of head		same
88. 1870	Bannerman	M	multiple homicide	2 persons	strang. after assizes	crime committed years earlier; prison robbed while awaiting sentence, death penalty reduced because he did not participate in rampage, may be exiled 5 years after recovery	strang.
89. 1871	commoner	M	homicide	no relation	strang. after assizes	reprieved at assizes	strang. after assizes
90. 1875+	commoner	M	homicide	nephew	temporary imprisonment pending recovery, to be sent to exile 5 years after recovery		exile
91. 1875+	commoner	M	multiple homicide	uncle, aunt, cousin	immed. decap.		<i>lingchi</i> ?
92. 1875+	commoner	M	abduction	woman	incoherent during trial; sent to prison because: 1) insane, 2) material witness (principal offender still at large)		kept in jail as material witness
93. 1875+	commoner	M	assault	2 persons	100 blows + 3 years exile	commuted to imprisonment	100 blows + 3 years exile

94. 1880	prisoner	M	homicide	cell mate	unknown	jailer was punished	
95. 1880	commoner	M	barging into palace grounds + tirade against government		strang. after assizes	officials petitioned emperor for immed. strangulation	same
96. 1880	commoner (uncle of an eunuch)	M	entering palace grounds without permission		100 blows		same
97. 1881	assistant magistrate	M	writing abusive letters to superiors		100 blows	already dismissed from civil service when the case reached the Board	same
98. 1881	commoner	M	multiple homicide	aunt, wife, son	immed. decap. with petition for reduction to decap. after assizes		immed. decap.
99. 1882	commoner	M	multiple homicide	2 kinsmen	military exile to remote region after recovery	Crime committed years earlier; amnesty of 1875 applied retro- actively in 1882; sent home after paying 12.42 taels	exile to remote place
100. 1885	commoner	M	homicide	adoptive mother	<i>lingchi</i>		same
101. 1891	commoner	M	multiple homicide	wife, son, daughter	life term (insane during trial)	Subsequently recovered;	strang. after assizes $\frac{11}{\infty}$

amnesty of 1889
 applied retroactively
 in 1891; to be released
 in 1894 if no further
 relapse

102. 1892	prisoner	M	homicide	jailer	life term (failed to regain sanity for trial)	Crime committed in 1830; finally released in 1892 because Board of Punishments took pity on him	strang.?
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ADDENDA

1. 1825	commoner	M	assault	no relation	military exile 5 years after recovery		military exile
2. 1825	commoner	M	homicide	<i>xiaogong</i> elder	immed. decap.	commuted to decap. after assizes; further commuted to life imprisonment; released in 1845 to serve aged parents	
3. 1867	commoner	M	homicide	ex-employer's wife	sent back for retrial		

Chapter Four

The Laws in Action

Bestiality or Insanity?

In 1762 Fei Bingre, a native of Taoyuan district in Jiangsu province, was charged with the crime of causing the deaths of seven of his wives, concubines, and servants. The resolution of this unusual case sheds light not only on the official attitude toward a crime involving multiple deaths, but also on the Qing officials' ideas on human nature. Fei Bingre was not an ordinary person: he was a member of the local gentry and had served for some time as the *ruxue* 儒學 (director of studies) of Taoyuan until his dismissal from the post for some undisclosed reason.

Fei Bingre had, over the years, married a total of five times and was widowed four times. His first wife hung herself in 1743 because she could not tolerate his constant vituperation. His second wife drowned herself a year later after Fei hit her in the mouth. Four years later, his third wife hung herself because she could not endure living with him. After his fourth wife died--of natural

causes--Fei married again, to a woman whose name was Wang. This Chinese Bluebeard had also taken four concubines and, as in the case with his wives, abused all of them. His first concubine was beaten to death by him simply because he was dissatisfied with the way she had been managing the household finances. After killing her, he ordered two of his servants to wrap the corpse in a coarse rush mat and had them junk the body in a common burial dump. His second concubine was sent home to her parents, but only after having been brutalized repeatedly by him. His relationship with his third concubine was also marred by violence and in 1760, because she failed to prepare dinner to his satisfaction, he punished her by battering her with a club and searing her genitals with a red-hot prong. When she subsequently died from her wounds, Fei had her buried in a lot behind the house. He was equally perverted toward his fourth concubine, woman Gu. Several times a year, under the influence of alcohol, he stabbed her with a knife in retaliation against her frequent rejection of his sexual demands. Once, during the winter of 1753, he cut off her right earlobe because he did not like the meal that she had prepared for him. That same winter, infuriated by her impertinence, he sliced a piece of flesh from her back, barbecued it, and downed it with some rice liquor. The list of perversities seemed endless. In 1760, upon returning from a trip outside Taoyuan, Fei summoned woman Gu to the

district seat to spend the night with him. When she showed up late, he forced her into a spreadeagled position and seared her genitals with a hot prong. When Gu's maid came to her mistress' aid, she too suffered burns on her face. Fei's victims were not limited to his wives and concubines. It was later discovered that he frequently abused his retainers as well. In 1751 alone, he beat two of them to death and had their bodies abandoned in a common burial dump.

The atrocities described above were not uncovered until 1762. Why did it take the authorities so long to get wind of his perverse deeds? According to the report submitted by the provincial officials, Fei's private quarters were off-limits to his servants and no one was allowed to enter unless they had express permission to do so. Therefore, there were no eyewitnesses to his cruel deeds. As for his neighbors, they lived too far away for them to be certain that something was amiss and they dared not go to the authorities without definite evidence, because false accusation was a punishable offense. Nonetheless, someone must have suspected something and the opportunity to inform on Fei came in 1761, when the prefect of Huaian *fu* made an informal visit to Taoyuan. Since such visits were undertaken expressly to solicit information about wrongdoings in a particular area, informants were not required to provide ironclad proof to support their charges.

One such informant tipped the prefect about Fei and the latter was arrested a few months later. He confessed readily to the charges and the governor of Jiangsu sentenced him to death by "immediate" strangulation, the punishment prescribed by the substatute governing the killing of two inferiors.

When the case reached the capital for joint review by the Board of Punishments, the Court of Revision, and the Censorate, the governor's judgment was found to be too lenient. The reviewers averred that:

This perverted and evil Fei Bingre had blatantly violated the laws of the land. He abused his wives, concubines, and servants, and caused the deaths of seven of them. Furthermore, his behavior toward the concubine Gu was especially heinous. Bestial persons like him are completely beyond the normal order of things.

The sentence recommended by the governor is really too light for such a serious offense. [But how shall we see to it that he gets the punishment he deserves?] If we simply overturn the governor's ruling and send the case back to him for retrial, it will take up too much time. . . . We recommend that Fei Bingre be sentenced according to another substatute, one that permits us to behead him as soon as possible. We believe that the substatute governing the punishment of ruffians and riffraffs serves our purpose perfectly.

The reviewers' recommendations were approved by the Qianlong emperor. Fei Bingre was decapitated, without further ado,
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at the provincial seat of Jiangsu.

It is noteworthy that at no point did the Qing officials raise the possibility that insanity was the reason for Fei's behavior. He was branded brutal, perverted, cruel, bestial, but not insane. Significantly, the officials

described him as "beyond the normal order of things." In other words, he was not human. The condemnation of Fei as inhuman, and the conspicuous exclusion of insanity as a probable cause of his perverse deeds imply that the Qing officials believed that the crime committed by Fei could only have been the work of one who had lost his humanity, not sanity.

By Reason of Insanity?

The Fei Bingre case illustrates a feature in the Qing judicial system. Despite the countless number of laws and the elaborate judicial process, the final verdict often depended on the idiosyncracies of the officials. This was also true with respect to the prosecution of insane criminals. Due to the failure of the registration and confinement program, a vast majority of the insane killers who were arrested and brought to trial did not have ironclad proof of their insanity. In the absence of such proof, Qing officials were forced to employ other tests of insanity. They tended to regard the more obvious manifestations of insanity, such as incoherence, jumping and dancing in the streets, prancing around brandishing a knife, and other wild behavior as stereotypical and imitable. The key test of insanity, then, was *wuzhi*, a legal rendition of the entire symptom complex of insanity. The Wu Liner case

(pp. 62-67) shows that there was no rigid interpretation of what constituted *wuzhi*, much depended on the officials' idiosyncratic conceptions of insanity. Generally speaking, any apparent motive, such as profit, money, and grudge, was often taken as evidence that insanity was not the cause of a homicide. The following cases will serve as examples of the arbitrary manner in which certain insane killers were prosecuted.

In 1758 a rich uncle of Luo Yaoguo died of illness, leaving his entire estate to his adopted son and only heir, Luo Chuangba. As soon as the funeral was over, Yaoguo began scheming for a share of his uncle's estate. He approached his cousin Chuangba to try to trick the latter into divesting a part of his inheritance, but Chuangba did not fall prey to his trickery. Somehow, word about Yaoguo's meeting with Chuangba reached the former's father. Consequently, Yaoguo was given a severe dressing down about his avarice. The following day, still smarting from the scolding, Yaoguo paid Chuangba another visit. The sight of his cousin lying comfortably in bed riled up Yaoguo so much that he grabbed an axe and hacked away at Chuangba, who died eleven days later. This seems to be an open-and-shut murder case, except that Yaoguo reportedly had a history of periodic insanity. Was this cold-blooded murder or was it homicide committed in a fit of madness?

The governor of Jiangxi chose to downplay Yaoguo's

history of insanity. He did not exactly doubt that Yaoguo was insane but he refused to believe that the accused was mad at the time of the murder. He was convinced that Yaoguo had a motive for killing his cousin, citing as bases for his conviction Yaoguo's designs on his rich uncle's estate, as well as the accused own admission that he bore a grudge against his cousin. The Board of Punishments upheld the governor's decision not to apply the insane homicide statute to the case. Luo Yaoguo was thus found guilty of premeditated murder, not homicide committed in a fit of madness.¹¹⁹

In 1853 Chen Yungxiang, a man with a long history of periodic insanity, was arrested for killing his landlord, a Taoist priest by the name of Zhao Fuyi. The homicide was discovered by an acquaintance of Zhao who happened to be in the neighborhood of the Taoist temple when he was attracted by the ruckus created by Chen. Chen seemed to be raving mad at the time, dancing wildly, holding an iron bucket in one hand. Curious about Chen's strange behavior, Zhao's acquaintance went inside the temple to ask Zhao what was the matter with Chen. He found Zhao lying dead in his bed, with all his clothing apparently stolen. He immediately suspected Chen of foul play and had him arrested. Chen was still raving mad at the time of his arrest but by the time the district magistrate had the chance to question him, he had recovered enough to give an account of the events of the

previous night which led to the homicide. He told the magistrate that he had returned to the temple late in the evening, after having spent the whole day out. Immediately upon his return to the temple, he was criticized by Zhao for having stayed out so late. When Chen did not respond to Zhao's vituperation, the latter became even angrier and ordered Chen to move out of the temple the next day. At this point, Chen lost his patience and demanded to know why Zhao was heaping verbal abuse on him. Zhao responded by throwing a brick at him. Zhao's relentless provocation proved to be too much for Chen, for he then suffered an attack of madness. He started throwing bricks back at Zhao as well as hitting him on the head with an iron bucket, killing him instantly. Although Chen admitted readily to killing Zhao, he denied that he had also stolen all of Zhao's clothing. Because homicide was a capital offense, the magistrate forwarded the case on to his superior, the governor. The governor accepted Chen's claim of insanity and sentenced him to strangulation after the assizes, the punishment prescribed by the 1852 substatute for single homicides committed by the insane.

The officials at the Board of Punishments however, felt that the governor was too rash in concluding that Chen was insane at the time of the killing. They noted, in particular, several questionable aspects in the case:

- 1) Chen's insanity had not been registered with the district

magistrate. 2) There were no eyewitnesses to the crime. In other words, there was no one to support Chen's account of the events leading to the murder. 3) Chen did not have a single scratch mark on his body. If the two had been fighting, as Chen had claimed, then it was inconceivable that Zhao had not managed to score a single blow on Chen. 4) Chen had not left the vicinity of the temple, thus how could a burglar enter and steal all of Zhao's clothing without getting caught? It could well be that Chen himself was the thief. The Board of Punishments suspected that Chen's fit of raving madness was no more than an act put on to fool the officials into giving him a lighter sentence than he deserved. The Board soundly criticized the provincial officials for failing to study all aspects of the case.¹²⁰ A retrial was ordered.

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In 1867 Han Ming, who had a history of epilepsy, was fired by his employer Liu after he and Liu's wife had had a few spats over his frequent requests for loans and similar favors. After his dismissal Han went to see Liu's wife in order to plead her forgiveness, only to be snubbed by her. Feeling deeply humiliated, Han suddenly suffered a fit and killed her. Although the military governor of Rehe, who presided over the trial, believed Han's account of the circumstances surrounding the killing, the Board of Punishments was more skeptical. It suspected that Han killed his employer's wife because he bore a grudge against

her, not because he suffered an epileptic seizure. It also pointed out that Han stabbed the woman only once, displaying remarkable self-control. The Board rejected the original judgment and a retrial was ordered.¹²²

In the above case the slayer's apparent restraint was interpreted as an indication that he was not insane at the time of the murder. What about a killer who "butchered" his victim? Yu Sheng was a young man who had a long history of on-and-off insanity. One day in 1854, while his mother was away visiting her relatives, he decided to go out to the fields to dig up some vegetables. Passing an ironware dealer, he suddenly realized that the knife he was carrying was not adequate for digging vegetables from the soil, so he bought a short-handled sword from the dealer. It was a stifflingly hot day; the heat was so oppressive that Yu suddenly lost control of himself. Running to the fields, he attacked the owner of the vegetable plots with his newly-bought sword, lobbing off his head and disembowelling him. When this case reached the Board of Punishments for review, the Board rejected the provincial officials' judgment that Yu was insane at the time of the killing. The Board officials did not believe that Yu bought the sword simply because he suddenly realized that the knife he was carrying was inadequate for digging vegetables. They also found it inconceivable that in the very short interval between the purchase of the sword and the killing, Yu could turn from a

normal person to a raving madman. Finally, the extreme brutality of the crime itself was interpreted as a clue that the killing was motivated by some deepseated hatred that Yu harbored against his victim. A retrial was ordered.¹²³

It can be said that lurking in the minds of the Qing officials who were confronted with seemingly insane criminals was the suspicion that these offenders were feigning madness to escape heavier punishments. At the same time however, this cynicism was tempered by the concern that any misdiagnosis of a genuinely insane offender as an imposter might result in the needless execution of the insane person. Thus, as the above cases show, although the Board officials were suspicious of the criminals' insanity claims, they stopped short of declaring them sane. Instead, they ordered the provincial officials to conduct retrials. Sometimes, even in cases where the lawbreaker was obviously sane when the crime was committed, the Board officials still preferred to be cautious. The following case is one example.

Jin Tianbao, his father, and two other friends were arrested in 1868 for gang raping a Banner woman and her young children. During the early stages of the investigation, the four rapists confessed readily to the charge, but when they were questioned again, they told the officials a completely different story. This renouncement of the earlier confession forced the local officials to send the four criminals to the governor of Fengtian for his adjudication.

Under intense interrogation by the governor and other prefectural officials, the four men once again confessed to the crime, and all but Jin Tianbao signed their confessions; Jin was unable to sign because of a sudden convulsive attack. Because they were anxious to conclude the case, the Fengtian officials asked the Board of Punishments if they could use Jin's first statement as the official confession. They explained that it might be a long time before Jin recovered sufficiently enough to sign his latest confession.

The Board replied that in cases involving seemingly insane criminals, particularly those who "recovered" shortly after the commission of the crime, the most important factor to take into consideration was whether the offender's illness had previously been registered with the authorities. If the offender was not a registered insane person, the officials should not spare any effort to determine, as accurately as possible, whether the illness was genuine, so that they would not be fooled by the criminal. As for the case of Jin Tianbao, the Board was extremely suspicious of his sudden illness. The Board was certain that the convulsive fit was no more than a sham put on by Jin to delay the conclusion of the rape case. The Board wanted very much to speed up the sentencing of the four rapists but they stopped short of ramrodding the case to an earlier conclusion. Instead of allowing the Fengtian officials to

facilitate the resolution of the case by revalidating Jin Tianbao's first confession, the Board ordered them to question Jin once more to determine if he was indeed
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feigning madness.

The Jin Tianbao case was not the only case where the Board of Punishments appeared to reverse itself in mid-decision. In the following case, the Board initially built up a strong argument against the criminal's insanity claim, only to back down at the final moment when a firm decision had to be made. In 1855 the governor of Anhui made a belated report to the Board of Punishments about a homicide committed by Su Chiaqing, a former sergeant in the Anhui army. Obviously biased in favor of the sergeant, the governor explained to the Board officials that Su was raving mad at the time of the killing, but he had subsequently recovered and had even fought very valiantly in the Anhui army. The governor asked the Board of Punishments whether, as a reward for his gallantry, Su could be spared the death penalty or even imprisonment. The officials at the Board were very suspicious of Su's purported bout of insanity and of the governor's handling of the case. In the first place, they could not see how it was possible for a person who had just recovered from insanity to perform so well in battle. Second, they could not understand why the governor waited more than two years to report the homicide, unless he was involved in a cover-up. However, although the Board

officials were extremely skeptical of the "facts" of the case, they stopped short of disbelieving the governor's assertion that Su was genuinely insane at the time of the killing. In the end, they extricated themselves from the predicament by postponing the final resolution of the case. They decided to sentence Su to prison for a period of five years, ostensibly to allow them time to ascertain the completeness of his recovery from insanity. At the end of the five-year term, they would try again to decide whether or not to give Su a reduced sentence. Significantly, the Board officials concluded their decision with the following thought: "It pays to be careful."¹²⁵

Trial and Error

Since provincial officials in Qing China were not trained legal experts, they often encountered difficulties with the myriad legal procedures and committed various judicial errors for which they were sharply rebuked by the Board of Punishments. The following are some examples of judicial errors.

Zhang Ziyou, an insane killer, was serving time in prison when, in 1870, it was raided by a group of bandits. Because he did not participate in the ensuing rampage, he was rewarded by having his death sentence of strangulation after the assizes reduced to one hundred blows with a heavy

bamboo, to be followed by banishment. Upon learning of the reduction decision, but before actually receiving the official notice from the Board of Punishments, the governor of Fengtian acted on his own to select an appropriate place of exile for Zhang. His unauthorized action was sharply criticized by the Board of Punishments for three reasons: 1) Zhang was an insane man who had killed two persons and injured five more--that is to say, he was dangerous. 2) He had been in prison for less than five years, thus even if he had already recovered from insanity, he still should not be released. 3) He was a Bannerman, which meant that he should not be actually exiled. Instead, the nominal exile sentence should be replaced by canguing.

The governor of Fengtian was undaunted by the criticism. He stood firmly by his decision and explained to the Board the reasons for his initiative. He informed them that although Zhang was a Bannerman, he could not name his prince, nor could he tell the governor who his supervising Banner captain was. The governor insisted that Zhang could not simply be given the sentence of canguing because, after all, he had committed a very serious offense. A good compromise, therefore, would be to apply the substatute, "confusing the identity of one's Banner captain" and send Zhang on his way to his place of exile. The governor explained that he had not waited for the official order from the Board of Punishments because Zhang's sudden

commutation was unprecedented and because, after counting the number of uneventful days Zhang had already spent in prison, he decided that it was safe to release him. He emphasized that he had simply adapted the standard procedures to the extraordinary circumstances.

The annoyance of the Board of Punishments remained unameliorated. The officials at the Board reminded the governor that the established procedure for reduction of an insane killer's death sentence called for the governor to wait until he had received the official notice from the Board of Punishments before taking any action. Moreover, the governor must also count the number of days the prisoner had been incarcerated since his recovery from insanity. If it was determined that the prisoner had indeed spent five full years in jail, during which time there had been no recurrence of insanity, the governor could then submit a report to the Board of Punishments which had the final say on whether or not the prisoner could be released. The Board did not find fault with the governor's insistence that canguing was too lenient for Zhang, but it criticized the governor for applying the wrong substatute. In fact, the Board pointed out, there was no such law as "confusing the identity of one's Banner captain." If the governor wanted to sentence Zhang to banishment, he should find another, more appropriate substatute. Finally, ignoring the governor's protestation that he had already counted the

number of days Zhang had spent in prison, the Board once again chastised him for not doing so. The Board ordered that Zhang be sent back to prison to serve out the requisite five-year term, at the end of which the governor was to send a detailed report to the Board of Punishments. Then and only then, insisted the Board, could the case be reviewed again.¹²⁶

Liu San, alias Liu Chaolin, was originally sentenced to strangulation after the assizes for committing a homicide during a fit of madness. Subsequently, his death sentence was reprieved by an act of pardon, but because he was classified as an insane killer, he was required to remain in prison until he had served fully five years of his prison term. In 1868, while he was thus waiting for the five years to be up, he suffered another relapse and killed his fellow inmate during a fit of madness. The Qing Code did not contain any provision that dealt with such a situation but, because his previous offense had already been pardoned, making him virtually a "guiltless" person, the governor-general of Sichuan decided that it would be inappropriate to apply the substatute "capital offender committing another homicide in prison" which mandated a penalty of immediate strangulation. Since Liu San had remained incoherent throughout the trial, the governor-general decided to sentence him to life-imprisonment, mistakenly believing that this was the sentence stipulated by the substatute of 1852.

His error drew a sharp rebuke from the Board of Punishments which criticized him for "failing to understand the meaning of the substatute." As the Board pointed out, the substatute of 1852 clearly stipulated the trial of an insane killer who failed to regain sanity should be postponed two to three years, after which time, if the killer recovered enough to give a coherent confession (a very important condition), he/she was to be sentenced to strangulation after the assizes. If the killer remained insane after three years of initial imprisonment, he/she was then to be formally sentenced to life imprisonment. The Board scolded the governor for having rashly sentenced Liu to life imprisonment, thus slighting the fact that Liu had committed homicide twice. In other words, the Board of Punishments felt that life-imprisonment was too lenient for a two-time killer, albeit one whose first offense had already been pardoned by amnesty.¹²⁷

Sometimes, a provincial official might seek the advice of the Board of Punishments before reaching final decision on a case. This might save him from committing a judicial error but not necessarily rebuke from the Board officials. The following case is one example. In 1822 Zheng Wenjia of Yunnan province was arrested for killing his wife during a fit of madness and for causing his father to commit suicide. Zheng's wife had no surviving family members, but because all his neighbors vouched that Zheng

was insane at the time of the killing, the governor of Yunnan applied the statute "husband beating to death his wife" and sentenced him to strangulation after the assizes. However, the governor was not confident that he had done the proper thing, because this case had been complicated by the fact that Zheng's father committed suicide upon hearing that his son had killed his daughter-in-law. The governor wondered if he should have applied the substatute "children or grandchildren having committed a capital offense caused their parents or grandparents to commit suicide" and sentenced Zheng to immediate strangulation instead. The Board of Punishments replied that the crime of wife-killing, although punishable by death, was by no means of the same magnitude of severity as rape or adultery or premeditated murder, therefore the substatute cited by the governor was not applicable. The Board then chided the governor for asking such a "pointless" question.¹²⁸

It is possible that, sometimes, the officials at the Board of Punishments employed the tactic of chastising their subordinates for incompetence in order to camouflage their own failings. For example, in 1843 Wang Yulong, a native of Jiangsu province, was arrested and charged with the crime of killing woman Tan during a fit of madness. This was not a routine homicide case because the relationship between Wang and his victim was extremely complex. Wang Yulong's grandfather had produced four sons: the eldest,

Zhangtai, was Yulong's grandfather. The third son, Yintai, was married to woman Tan; because the couple failed to produce a male heir, they had adopted Yulong's natural father as heir. The fourth son, Kuitai, had a son called Jingsi who, because he had no son of his own, adopted Yulong as his heir. In other words, Yulong's "father" was a first cousin of his natural father whose adoptive mother was woman Tan, Yulong's victim. Woman Tan's formal relationship with Yulong however, was only that of an aunt of his adoptive father, making her a *xiaogong* or third degree senior. The governor of Jiangsu initially decided to sentence Yulong according to the statute for killing one's *xiaogong* senior, one that mandated a penalty of decapitation. Later, however, the governor wondered if decapitation was too lenient because, after all, woman Tan was also Yulong's natural father's adoptive mother, making her almost his grandmother. On the other hand, he reasoned that since woman Tan was not Yulong's natural grandmother, his debt or obligation to her should not be regarded as similar to that toward his natural grandmother. Unable to solve this knotting problem, the governor turned to the Board of Punishments for guidance.

The Board of Punishments was unable to offer the governor any immediate advice, because the Qing Code did not contain any provision for a crime involving a family relationship as complicated as this one. It turned to the

Board of Rites for help, thinking that being experts on matters dealing with propriety, the officials at the Board of Rites should be able to define the relationship between woman Tan and Wang Yulong. The Rites officials however, were unable to offer any advice because they, too, could not find any precedents or stipulations that were appropriate to this case. Thus it was up to the Board of Punishments to make a definitive decision on the matter. The following is the Board's somewhat ingenious reply to the governor of Jiangsu:

The reason why people who injured their grandparents must, without exception, be subjected to the punishment of *lingchi* is because they had done harm to those whom they are directly descended from. Such criminal acts are, therefore, absolutely uncondonable. As for injury inflicted on one's natural father's adoptive mother, because the criminal already has an adoptive father, his debt or obligations to the woman--who is still his senior--has been severed by the adoption. Thus we cannot say that [the two offenses] are of the same magnitude of severity.

Some may say that [woman Tan] was, after all, the criminal's natural father's adoptive mother and thus her seniority to him cannot be slighted. This may well be true, but even if we considered only the formal relationship between the two, the deceased, being the criminal's adoptive father's aunt, was still his *xiaogong* senior, which means that he would still be punished more severely than would have been the case for killing an "ordinary person." No one can say that we are slighting her seniority.

However, we have here only very sketchy information from the governor to work with--we hardly know the details of the case at all! How can he expect us to make a [prudent] decision? The governor must get to the bottom of his case, get all the facts straight, pass a tentative judgment, and send all the pertinent materials to us. Then and only then can we decide on this case.¹²⁹

In other words, the Board of Punishments deposited the

sticky problem back into the laps of the governor of Jiangsu.

Crime and Punishment

The most crucial element in the resolution of any criminal case in Qing China was the application of a statute or substatute that was most appropriate to the crime itself, or to the circumstances in which the crime was committed, so that "the most fitting punishment" could be meted out. The legal device that was most frequently resorted to, especially in the search for the most befitting punishment, was the use of analogy. The following cases illustrate how and when analogy was employed. For the most part it was a simple exercise but, occasionally, it was a feat of legal acrobatics to find the appropriate law to fit the crime.

In 1821 Liang Shijun, a native of Anhui province, was arrested and charged with the crime of false accusation. This was a very serious offense in Qing China but because Liang was insane, a condition which led the officials to believe that he had not acted out of malice, military exile was considered too severe a punishment for him. Because there were no provisions in the Qing Code for punishing an insane person guilty of committing the crime of false accusation, the officials applied by analogy the substatute "homicide committed because of insanity" and

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sentenced him to life-imprisonment.

Wu San, a native of Zhili province, was a victim of periodic epileptic seizures. One day in 1859, he suffered another such fit, so his mother sent for an acupuncturist called woman Chi to apply remedial treatment to him. While she was inserting needles into his head, he suddenly let out a great cry of pain. He jumped out of bed, grabbed a club, and hit woman Chi several times with the club. Eventually, woman Chi's wounds healed, forming a very itchy scar that she could not resist scratching. Unfortunately, when the scar was scratched off, "vapors" entered the reopened wound and woman Chi died eleven days later of *choufeng* 抽風 (tetanus?). Wu San was arrested and found culpable for the death of woman Chi. But because the injury he inflicted on her was not originally fatal, the governor-general of Zhili did not sentence him to death. Instead, he passed a tentative sentence of exile. In his report to the Board of Punishments, the governor-general made a special note of the fact that Wu was the sole support of his aged parents and asked if it would be possible to reduce the exile sentence to canguing, to allow Wu to stay home to take care of his parents. The Statutes Commission, to whom the Board transferred the governor's request, replied that there were no provisions in the Qing Code that dealt with a parole request from one who was found guilty of committing a homicide during an epileptic fit. However, the

by-laws concerning the reduction of sentences stipulated that an insane killer must have his or her death sentence reprieved twenty-one times before he or she became eligible for exile. On the other hand, a person who became temporarily deranged as a result of an illness other than insanity and, as a result, committed a homicide, needed only three reprieves. In other words, the regulations concerning the exile of those who committed homicide during an epileptic fit or because of temporary derangement due to illness were different from those governing truly insane killers. Therefore, the Statutes Commission concluded, it would not be unreasonable to assume that, had there been written by-laws concerning parole for the purpose of taking care of aged parents, those relating to temporary derangement would also be different from those governing genuine insanity. As for the case of Wu Kan, the Commission suggested that there was no need for him to wait five years becoming eligible for parole (as was required of insane killers). However, in view of the fact that he did cause the death of another person as a result of his illness, the Commission was concerned that if he were allowed to return home immediately, albeit restrained by a cangue, he could suffer another seizure and cause more trouble. In the end, for the sake of precaution, the officials recommended that this case be treated in the same manner as in the case of an insane killer who could not testify coherently. In other words,

Wu was to be imprisoned for two to three years for observation. If he did not suffer any relapse during that period, he could then be released to take care of his ¹³¹parents.

Chapter Five

Conclusion

The Qing treatment of insane criminals was at once a continuation of, and a departure from, the time-honored legal policy of treating the insane with clemency. This tradition evolved during the Zhou period when the concept of "Three Pardonables" was developed to ensure the lenient treatment of offenders who were very young, very old, or mentally incompetent. An elaboration of this concept is evident in the Tang Code, on the basis of which relatively light sentences were handed down to those who suffered from incurable diseases or who were seriously ill, a designation that included insanity. Qing laws pertaining to single homicides likewise prescribed lighter penalties to insane, as opposed to sane, killers. At the same time however, the strict terms in which paroles were granted and sentences reduced reflect a departure from the tradition of clemency toward the insane. The Qing policy of registering and confining all insane persons, regardless of whether they had violated any laws, was clearly a break from this ancient position. Qing laws in general were unprecedented inasmuch

as they represented the first legal attempts to deal specifically with the problem of criminal insanity.

Insanity was by no means a new illness. It is highly unlikely that a dramatic increase in the number of insane persons in the early Qing period provoked special attention. Yet for the first time in Chinese history, insanity was perceived as a pressing social problem. A closer examination of two major social forces that shaped the early-Qing period suggests an explanation for this unprecedented development.

One of the social forces was the incessant push for imperial control over all aspects of life in China. The Qing rulers created or resurrected a number of institutions which were specifically designed to mold the minds and restrict the activities of the populace. The *xiangyue* lectures, community drinking ceremonies, government-subsidized schools, literary inquisition, *baojia* and *dibao*, the Qing Code, were all instruments of social control. Many of these had existed in some form during earlier times, but only in the Qing were they developed fully and used together as agents of control. Although many of these control agents failed to live up to the expectations of the Qing rulers, the push for control remained a persistent goal throughout the Qing period.

Another major development of the early-Qing period was the phenomenon of rapid population growth and the

concomitant massive migration of people from their native places to less populated areas throughout the empire. Manchuria, western Guangdong, Guangxi, Taiwan, Vietnam, eastern Sichuan, southern Shaanxi, and western Hubei were some of the major areas which experienced massive influx of "outsiders." The latter three areas, especially Sichuan, had been devastated by the numerous rebellions and uprisings of the late-Ming period.¹³² In Sichuan, for example, many of the early immigrants staked out huge plots of land for reclamation, but because they could not cultivate the entire areas themselves, farmed out portions of their holdings to tenant farmers who, in turn, sublet portions of the rented land to their own tenants. Because the initial policy of the Kangxi reign (1662-1722) was to encourage reclamation of farm lands in Sichuan, there was little effort to document, for taxation purposes, the exact size of the staked-out areas or to record the names of the landowners. Thus, after several decades of ad hoc arrangements, many of the actual cultivators had no idea who were their landlords, nor did the landlords know who were their tenants. As a result, disputes over land boundaries and rent grew more and more frequent. This phenomenon could¹³³ be found in other provinces as well.

The increasingly frequent disputes over land boundaries and rent, and the rising number of landless, impoverished, and unhappy immigrants altogether contributed

to unrest in many parts of the empire. Unrest, combined with the availability of instruments of control, perhaps encouraged popular sentiment in favor of more police control. The obvious targets for crime control were strangers and misfits. It is perhaps not a coincidence that the first experiment to register and confine insane persons was carried out in Sichuan, at the governor-general's own initiative. It was the governor-general's memorial to the Board of Punishments, requesting penalties to reinforce his scheme, that resulted in the 1731 order mandating registration and confinement of all insane persons throughout the empire. Significantly, only three years earlier, in 1728, the Yungzheng emperor had expressed concern over the increasingly¹³⁴ chaotic situation in Sichuan. One wonders how many of the calls for tighter control of insane persons were made to satisfy demands, from above and below, that something concrete be done to control crime and violence. Whatever the case, the governors' call for tighter control of insane persons served to convince the central government of the serious need for legislation specifically intended for insane criminals.

The establishment of the *baojia* and *dibao* systems in the early-Qing period contributed significantly to the formulation of a coherent policy toward the insane. The *baojia* headmen and *dibao* figured prominently in governmental efforts to regulate the activities of insane persons. For

example, the registration-confinement statute of 1766 stipulated that before a registered insane person could be unchained, the clan headman and the *dibao* or *baojia* headmen must submit a willing bond pledging that they would accept responsibility for the conduct of the "recovered" individual. The *dibao* and/or *baojia* headmen were also required by law to report all insane persons living in their jurisdictions. The registration-confinement program, in short, was incorporated into the *baojia* and *dibao* institutions.

Inasmuch as insanity was identified as a form of social deviance, new legislation was called for dealing specifically with insane criminals. Two perplexing questions confounded the Qing jurists: 1) whether insane offenders were responsible for what they did, and 2) whether they should be punished for what they did. The Qing concept of criminal insanity was relatively simple: insane persons lacked a crucial discriminating awareness and therefore were both incapable of comprehending their actions and oblivious to actions toward them. They were regarded as predisposed toward deviant behavior and not as willful perpetrators of criminal activities. All the case records involving insane offenders contain the following formula-sentence: "So-and-so, because of insanity, killed/wounded so-and-so." Considerable blame however, was placed on an offender's family, neighbors, *baojia* headmen, and *dibao*, who were subject to punishments should their insane charges

commit felonious acts.

The second question (whether or not insane offenders should be punished for what they did) was addressed from the standpoint of three conceived purposes of punishment. In the first place, punishment should serve as a just retribution for wrongdoing, such as handing down the death penalty in homicide cases. Second, punishment should function as a deterrent. Such spectacles as public executions and the display of the heads of decapitated felons, were contrived to deter other delinquents from perpetrating crimes. Third, punishment should serve an educational purpose. Monetary redemption, corporal punishment, and penal servitude were viewed as means by which to rehabilitate former offenders.¹³⁵

The officials who supported this triform concept of punishment held the opinion that punishing insane offenders served no useful purpose. In the first place, it was an injustice to punish them for something they were not aware of committing. Second, punishing an insane offender would not serve as a deterrent to other insane persons, because they could not comprehend the meaning of punishment. Third--and this again relates to their lack of awareness--the insane offenders themselves would not benefit from punishment. The laws of single homicide pertaining to insane killers reveal the rationale of the anti-punishment position. The pioneering statute of 1727 imposed a fine

of 12.42 taels of silver to be paid to the victim's family as "funeral money." The statutes of 1752 and 1762 were both offshoots of the registration-confinement program and were based on the principle of preventive detention. The former provided for temporary incarceration--pending recovery--while the latter called for life-imprisonment. Neither sentence was considered punishment per se, because imprisonment was not considered a standard form of punishment in traditional Chinese law. In 1802, single homicides were matched with the death penalty. This development was not so much a concession made by the anti-punishment officials to the hardliners, as it was a concession to the likely exploitation of the comparatively lenient homicide laws by sane, hardened criminals. This interpretation is borne out by the fact that in 1852, a new statute once again decreed life-imprisonment as the standard treatment for single homicides. The pro-punishment officials, though, dominated the deliberations over cases involving multiple homicide, a crime traditionally regarded as a more serious offense than single homicide. However, the death penalty for multiple homicides was overwhelmingly rejected when first recommended in 1766. Acceptable laws pertaining to multiple homicides committed by insane killers were subsequently fashioned in a spirit of compromise between the anti- and pro-punishment camps.

The history of homicide laws pertaining to insane

killers is one of increasing complexity, reflecting the growing awareness of the problematic nature of insanity. The early Qing laws were remarkably simplistic: they were no more than mere reaffirmations of the age-old notion that insane offenders should be treated with clemency. Thus, even when public security became a major concern, insane killers were allowed to return home from prison one year after they had "recovered" from their illness. As the officials came into contact with more insane criminals, they became more aware of the periodic or episodic nature of insanity, a characteristic that was already well-recognized in the medical treatises. The officials realized that temporary incarceration was not sufficient to guarantee public security, because an absence of the symptoms of insanity did not necessarily mean a permanent cure. Consequently, the lawmakers replaced short-term incarceration with life-imprisonment, thereby incorporating existing medical symptomatology into the law codes.

As the standard descriptions of insane behavior, both in the medical treatises and in the trial records, were rather stereotyped, the Qing officials became increasingly concerned that hardened criminals would exploit the comparatively lenient laws simply by acting out one or more of the officially-recognized symptoms of insanity. Subsequently, in 1802 they imposed the death penalty on killers who seemed to be coherent at the time of arraignment,

so that successful fakers could be punished. However, this new procedure, formally enacted as a substitute in 1806, continued to provide a life-imprisonment sentence for "genuinely insane" killers.

The substitute of 1806 created a new problem for Qing judicial officials. According to this new law, a killer who was coherent at the time of the trial was to be sentenced to death. However, as the Qing officials soon realized, because of the episodic nature of insanity, coherency at the time of the trial was not a foolproof indicator of sanity; conversely, incoherency was not necessarily an accurate test of insanity. In other words, there existed a strong possibility that genuinely-insane killers could be executed simply because they were not exhibiting the symptoms of their illness at the time of their trials. The resolution of this problem led to the formulation of the substitute of 1852. This new law stipulated that killers who remained incoherent after they were arrested and could therefore not testify, were to be imprisoned for a period of two to three years. If, during this period, they regained their sanity, they were to be tried and sentenced to strangulation after assizes--the same sentence given to those who regained their sanity shortly after they were arrested. In both cases the death sentences were to be reprieved at the assizes, meaning that insane killers who regained their sanity were actually sentenced

to life-imprisonment. Meanwhile, those who failed to recover within three years were required by the statute to be imprisoned for life, with no possibility of parole.

The statute of 1852 effectively killed three birds with one stone. First, it eliminated the possibility of actually executing genuinely insane killers. Second, it guaranteed at least life-imprisonment for successful fakers. Third, it ensured that only those who were competent to stand trial were actually brought to trial, thus realizing the principle that punishment should be inflicted only on those who could comprehend the meaning of punishment.

The history of laws pertaining to homicides committed by the insane is also one of increasing severity. This is especially true with respect to multiple and intrafamily homicides. The changes in the statutory sentences for single homicides were spurred by the push for crime control. Thus monetary redemption gave way to short-term imprisonment which was, in turn, replaced by life-imprisonment. The changes in the statutory sentences for multiple and intrafamily homicides, on the other hand, were provoked by a hardening of attitude toward those who perpetrated these serious offenses. Thus the gap between the penalties imposed on sane and insane killers eventually narrowed. In fact, after 1831, there was no difference between the punishments for the killing of seniors.

Despite perennial modifications of laws dealing with insane killers, the conception of criminal insanity remained virtually unchanged throughout the Qing period. New interpretation or definitions of this deviant phenomenon were not advanced. The proliferation of substatutes dealing with insane killers therefore, was less a result of any new understanding of criminal insanity and more a consequence of growing intolerance in an increasingly-disordered age.

Notes

1

Karl Bünker, *Quellen zur Rechtsgeschichte der T'ang-Zeit*, *Monumenta Serica*, v. 9, (1946). Van der Valk's critique appeared in *T'oung Pao*, ser. 2, 38, (1948), pp. 338-343.

2

Ernest Alabaster, *Notes and Commentaries on Chinese Criminal Law and Cognate Topics. With Special Relation to Ruling Cases*, (Taipei: Ch'eng-Wen Publishing Co., 1968).

3

Karl Bünker, "The Punishment of Lunatics and Negligents According to Classical Chinese Law," *Studia Serica*, 9, 2(1950), pp. 1-16.

4

Derk Bodde and Clarence Morris, *Law in Imperial China, Exemplified by 190 Ch'ing Dynasty Cases (Translated from the Hsing-an hui-lan), with Historical, Social, and Juridical Commentaries*, (Philadelphia: University of Pennsylvania Press, 1973), pp. 65-66.

5

Kung-chuan Hsiao, *Rural China: Imperial Control in the Nineteenth Century*, (Seattle: University of Washington Press, 1960), pp. 185-86. It should be noted here that *xiangyue* lectures were not a Qing innovation. This practice dated back to the Song, but it was in the Qing period that the lectures were specifically used as an agent of control. This is true with the other instruments of control that will be described later in this chapter.

6

Ibid., pp. 208-209. Again, this was a Qing resurrection of a classical tradition.

7

Ibid., pp. 235-236; Pei Huang, *Autocracy at Work: A Study of the Yung-cheng Period, 1723-1735*, (Bloomington: Indiana University Press, 1974), pp. 203-204.

8

Kung-chuan Hsiao, *Rural China*, pp. 237-238.

9

Hsiao, *Rural China*, p. 241; Huang, *Autocracy at Work*, pp. 197-198. Literary inquisition had precedents in pre-Qing history. The Ming, for example, is notorious for its inquisition.

10

L. Carrington Goodrich, *The Literary Inquisition of Ch'ien-Lung*, (New York: Paragon Book Reprint Corp., 1966), pp. 30-42.

11

Hsiao, *Rural China*, pp. 44-45. A prototype of the Qing *baojia* system dated back to the Song.

12

Ibid., p. 63.

13

Alan R. Sweeten, "The Ti-Pao's Role in Local Government as Seen in Fukien Christian 'Cases,' 1863-1869," *Ch'ing-shih wen-t'z*, v. 3, 6(December 1976), pp. 4-5.

14

Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance*, (New York: Wiley, 1966), p. 19.

15

Harry J. Lamley, personal communication to author.

16

There were two basic kinds of death penalties in Qing law: 1) immediate decapitation or strangulation, and 2) decapitation or strangulation after the assizes. Those who were sentenced to "immediate decapitation" or "immediate strangulation" were executed without delay after the final judgment was handed. Those who were sentenced to decapitation after the assizes or strangulation after the assizes were held in prison to await execution; the death penalty was subject to review during the autumnal assizes held in the capital. At the assizes, the criminal could be either found "deserving of punishment" and executed, or he could have his sentence reduced or reprieved.

17

The punishments for this category of homicide, and of the other homicides are based on Guy Boulais, *Manuel du Code Chinois*, (Taipei: Ch'eng-Wen Publishing Co., 1966).

18

刑案匯覽(*Xing'an huilan*), Zhu Qingqi (祝慶祺), comp.,

(Taipei: Ch'eng-Wen Publishing Co., 1968), v.5, p. 2112.

19

The subject of *guoshisha* is very complex. A detailed treatment of this topic is outside the scope of this study. The reader is urged to consult Alabaster, *Notes and Commentaries*, pp. 260-286, and Nakamura Shigeo (中村茂夫), *清代刑法研究* (*Shindai keihō kenkyū*) (Tokyo: Tokyo University Press, 1973), pp. 17-148.

20

The Beijing reprint of this section was used in this study.

21

Maeno Noaki (前田直彬), *中国小説史考* (*Chūgoku shōsetsushi kō*) (Tokyo: 1975), pp. 258-259.

22

Ilza Veith, "The Supernatural in Far Eastern Concepts of Mental Disease," *Bulletin of the History of Medicine*, v. 37, (1963), p. 140.

23

Xue Yunsheng (薛允升), *讀例存疑* (*Duli cunyi*) (Beijing: 1905); Nakamura, *op. cit.*

24

John Carroll, *Puritans, Paranoid, Remissive: A Sociology of Modern Culture*, (London: Routledge and Kegan Paul, 1977), p. 11.

25

Yagiwa Toshihiko (矢沢利彦), trans., *イエズス会士中国語彙集* (*Iezusukaishi chūgoku shokanshū*) (Tokyo: 1970), pp. 22-26.

26

Ibid., p. 35; pp. 77-80.

27

Emily Ahern, "Chinese-style and Western-style Doctors in Northern Taiwan," in Arthur Kleinman, et al, ed., *Culture and Healing in Asian Societies: Anthropological, Psychiatric, and Public Health Studies*, (Boston: G.K. Hall, 1978), pp. 101-110.

28

古今圖書集成醫部全錄 (*Gujin tushu jicheng yibu chuanlu*) (Beijing: 1962), pp. 1603-1604; Manfred Porkert, *The Theoretical Foundations of Chinese Medicine: Systems of Correspondence*, (Cambridge: The MIT Press, 1974), p. 227.

- 29 *Gujin tushu jicheng yibu chuanlu* (hereafter referred to as *Yibu chuanlu*), pp. 1600-1601.
- 30 *Ibid.*, p. 1604.
- 31 Wen-shing Tseng, "The Development of Psychiatric Concepts in Traditional Chinese Medicine," *Archives of General Psychiatry*, v. 29, (October 1973), p. 571.
- 32 *Yibu chuanlu*, p. 1605.
- 33 *Ibid.*, p. 1606.
- 34 Tseng, *op. cit.*, p. 571.
- 35 The Five Phases are Metal, Wood, Water, Fire, Earth.
- 36 *Yibu chuanlu*, pp. 1608-1609.
- 37 *Ibid.*, p. 1649.
- 38 *Ibid.*, pp. 1610-1611.
- 39 *Ibid.*, p. 1612.
- 40 *Ibid.*, p. 1614.
- 41 *Ibid.*, p. 1619.
- 42 *Ibid.*, pp. 1624-1625.
- 43 *Ibid.*, p. 1602.
- 44 *Ibid.*, p. 1623.

- 45 Qin Bowei (秦伯未), ed., *清代明醫醫案精華* (*Qingdai mingyi yian jinghua*), (Shanghai: 1959), "Wu Jutong," pp. 22-23.
- 46 Wang Shihong (王士宏), *王氏醫案譯注* (*Wangshi yian yizhu*), (Shanghai: 1957), p. 46.
- 47 cited in Ilza Veith, "The Supernatural in East Asian Concepts of Mental Disease," pp. 142-143.
- 48 *欽定古今圖書集成* (*Qingding gujin tushu jicheng*) (Shanghai: 1884), "巫覡" (*wuxian*), 810, II, 3b-4a.
- 49 For more information on the subject of ghosts, see David Jordan, *Gods, Ghosts, and Ancestors: Folk Religion in a Taiwanese Village*. (Berkeley: University of Calif. Press, 1972), chapters 2 and 8. Also, Arthur Wolf, ed., *Religion and Ritual in a Chinese Society*, (Stanford: Stanford Univ. Press, 1974), pp. 131-182.
- 50 談異 (*Tan yi*), *筆記小說大觀* (*Biji xiaoshuo daguan*; hereafter BXD), 4th ed., (Taipei: 1974), p. 5641.
- 51 Emily M. Ahern, *The Cult of the Dead in a Chinese Village*, (Stanford: Stanford University Press, 1973), pp. 201-202.
- 52 Jack M. Potter, "Cantonese Shamanism," in Arthur Wolf, ed., *Religion and Ritual in Chinese Society*, pp. 207-232.
- 53 Liu Zhiwan (劉枝萬), *中國民間信仰論集* (*Zhongguo minjian xinyang lunji*), (Taipei: 1974.)
- 54 果報聞見錄 (*Guobao wenjian lu*), in BXD, 3d. ed., (Taipei: 1974), p. 6606.
- 55 Robert H. van Gulik, *Sexual Life in Ancient China, (a Preliminary Survey of Chinese Sex and Society from ca. 1500 B.C. till 1644 A.D.)*. (Leiden, E.J. Brill, 1961).

56

Guobao wenjian lu, p. 6607.

57

Zhao Qishi (趙葵石), *神仙菁華* (*Shenxian jinghua*), (Shanghai: 1936), p. 47.

58

Ibid., pp. 75-76.

59

quoted in Herbert D. Lamson, *Social Pathology in China: A Source Book for the Study of Problems of Livelihood, Health, and the Family*. (Shanghai: Commercial Press, 1935), pp. 416-417.

60

例案彙集 (*Lian chuanji*), Zhang Guangyue (張光月), comp., (1722), ch. 22, pp. 26b-27a.

61

成案彙疑 (*Chengan zhiyi*), Hong Hongxu (洪弘緒), Rao Han (饒翰), comp., (1755), ch. 19, pp. 42a-42b.

62

According to this order, if an insane person committed suicide, his or her relatives and neighbors would be caned 80 times with a heavy bamboo; the magistrate or Banner captain would lose the equivalent of 3 months' salary. If an insane person committed homicide, the punishment would be 100 strokes and one year's salary, respectively.

63

Xingan huilan, v. 5, p. 2114.

64

大清現行刑律彙編 (*Daqing xianxing xinglü anyü*), Shen Jiaben (沈家本) comp., (1908), "Homicide," pp. 92a-93b; Nakamura, *Shindai keihō kenkyū*, pp. 189-191.

65

This is in keeping with the Qing policy of not confining female felons, unless they had committed a capital offense such as adultery or homicide.

66

Daqing xianxing xinglü anyü, *op. cit.* pp. 92a-93b; Nakamura, *op. cit.*, pp. 189-191.

67

Yu-mei Chang Chen, "Local Control of Convicted Thieves in Eighteenth-Century China," in Frederic Wakeman, Jr., and Carolyn Grant, eds., *Conflict and Control in Late Imperial China*, (Berkeley: University of California Press, 1975), pp. 121-142.

68

Although the substatute did not specify *baojia* participation in the scheme, there were instances where *baojia* headmen were punished for negligence. As Kung-chuan Hsiao points out in his *Rural China*, even Qing officials sometimes were confused about the roles of *baojia* and *dibao*.

69

刑案匯覽續編 (*Xingan huilan xupian*), Wu Chao (吳潮) comp., (Taipei: Wen Hai, 1970), v. 6, pp. 2993-2995.

70

John Henry Gray, *China: A History of the Laws, Manners, and Customs of the People*. 2 vols., (London: Macmillan and Co., 1878), v. 1, pp. 46-53.

71

Ibid., pp. 48-49.

72

For more information on prison conditions, see Derk Bodde, "Prison Life in Eighteenth Century Peking," *Journal of the American Oriental Society*, 89, 2 (April-June 1969), pp. 311-333. Also, Western accounts of Qing prisons have been quoted extensively in Bodde and Morris, *Law in Imperial China*, pp. 104-112.

73

Xue Yunsheng, *Duli cunyi*, ch. 34, pp. 21a-24b.

74

粵東成案初編 (*Yuedong chengan chupian*), Zhu Shu () comp., (1882), ch. 13, p. 23a.

75

Daqing xianxing xingli anyu, "Homicide," pp. 92a-95b.

76

Nakamura, *Shindai keihō kenkyū*, p. 190.

77

Ibid., pp. 183-185; Karl Bünker, "Punishments of Lunatics and Negligents," pp. 1-9.

78 Bttinger, p. 6.

79 Torture was a legitimate legal procedure that was frequently used to force confessions from the accused.

80 **成案新編** (*Chengan xinpian*), Wen Wobi (**聞我備**), comp., (1763), ch. 9, pp. 14a-19a.

81 *Yuedong chengan chupian*, ch. 13, pp. 23a, 28b, 31b.

82 **大清歷朝實錄** (*Daqing lichao shilu*), (Taipei: 1964), "Qianlong," pp. 14397-14398, 14415, 14459.

83 **刑部比照加減成案** (*Xingbu bizhao jiajian chengan*) Xu Lian (**許樾**), Xiong Wo (**熊我**), comp., (1763), ch. 21, pp. 6a-6b.

84 *Xingan huilan*, v. 6, pp. 2763-2764.

85 *Xingan huilan xupian*, v. 5, pp. 2351-2354.

86 Nakamura, *Shindai keihō kenkyū*, p. 190.

87 This decision was made a substatute in 1727. See Nakamura, pp. 190-191.

88 *Xingan huilan*, v. 5, p. 2114.

89 Ibid., pp. 2114, 2117.

90 Ibid., pp. 2113-2115.

91 Nakamura, p. 193.

92 **定例彙編** (*Dingli huipian*), (1762-1883), ch. 13, pp. 73a-76b.

- 93 *Dingli huipian*, ch. 13, pp. 73a-73b.
- 94 *Ibid.*
- 95 *Ibid.*, ch. 14, pp. 40a-41b.
- 96 *Xingan huilan*, v. 5, pp. 2125-2126.
- 97 *Ibid.*
- 98 For an excellent study of this aspect of traditional Chinese law, see T'ung-tsu Ch'ü, *Law and Society in Traditional China* (Taipei: 1973), pp. 41-78.
- 99 *Lian chuanji*, ch. 22, pp. 26a-26b.
- 100 T'ung-tsu Ch'ü, p. 106.
- 101 *Daqing lichào shilu*, "Jiaqing," pp. 2415-2416; 2424-2425. A shorter version can also be found in *Xingan huilan*, v. 5, p. 2123.
- 102 Nakamura, p. 193.
- 103 T'ung-tsu Ch'ü, pp. 105-107
- 104 *Chengan zhiyi*, ch. 19, pp. 41a-41b.
- 105 *Xingan huilan*, v.5, p. 2120.
- 106 Kinship relationship in China is defined by the "five mourning degrees" structure. The duration and severity of mourning correspond to the closeness of kinship. I have adopted Bodde and Morris' rendition of the structure:
1. *Zhancui* (3 years mourning)
 2. *Zicui*: there are four divisions within this degree--
1 year mourning with staff, 1 year without staff, 5

months, and 3 months.

3. *Dagong*: 9 months mourning
4. *Xiaogong*: 5 months mourning
5. *Sima*: 3 months mourning.

For details, see Bodde and Morris, *Law in Imperial China*, p. 36.

107 欽定四庫全書 (Boan xinpian), Chuan Shichao, comp., (Taipei: 1968), v. 4, pp. 1783-1789.

108 *Xingan huilan*, v. 5, p. 2120.

109 說帖類編 (Shuotie leipian), Statutes Commission, comp., (1835), ch. 22, pp. 32a-32b.

110 Nakamura, p. 197.

111 *Xingan huilan*, v. 5, pp. 2117-2118.

112 *Xingan huilan xupian*, v. 1, pp. 273-275.

113 Ibid., v. 6, pp. 3022-3024.

114 T'ung-tsu Ch'u, pp. 213-217.

115 *Xingan huilan*, v. 5, pp. 2114-2115.

116 增定通行條例 (Zhengding tongxing tiaoli), Guo Ying (國英) comp.? (1883), ch. 1, "Xianfeng 11," pp. 25a-27a.

117 *Xingan huilan xupian*, v. 6, pp. 3008-3009, 3010-3011, 3034-3035.

118 *Chengan xinpian*, ch. 8, pp. 24a-26b.

119 Ibid., ch. 9, pp. 20a-20b.

- 120 *Xingan huilan xupian*, v. 6, pp. 3024-3026.
- 121 Epilepsy was sometimes, but not always, regarded as insanity. In this particular case, the officials accepted it as a form of insanity,
- 122 *Xingan huilan xupian*, v.9, pp. 4436-4438.
- 123 Ibid., pp. 3027-3029.
- 124 Ibid. v. 9, pp. 4436-4438.
- 125 *Xingan huilan*, v. 11, p. 5008.
- 126 *Xingan huilan xupian*, v. 6, pp. 3019-3002.
- 127 Ibid., pp. 3005-3007.
- 128 *Xingan huilan*, v. 7, p. 3101.
- 129 *Xingan huilan xupian*, v. 8, pp. 3965-3968.
- 130 *Xingbu bizhao jiajian chengan*, ch. 23, pp. 2a-2b.
- 131 *Xingan huilan xupian*, v. 6, pp. 2998-3002.
- 132 Suzuki Chūsei (鈴木中正), 中国史における禁断 (Chūgokushi ni okeru kakumei to shūkyō), (Tokyo: Tokyo University Press, 1974), p. 155.
- 133 Ibid., pp. 155-156.
- 134 Ibid., p. 156.
- 135 Nishida Taichirō (西田太一郎), 中国刑法史研究 (Chūgoku

keihōshi kenkyū), (Tokyo:1964), pp. 71-73.

Appendix A

Sources for Cases Listed in Table I

Case:

1. *Lian chuanji*, ch. 22, pp. 26a-26b.
2. *Chengan zhiyi*, ch. 19, pp. 39a-39b.
3. *Ibid.*, pp. 42a-42b.
4. *Ibid.*, pp. 41a-41b.
5. *Ibid.*, pp. 43a-43b.
6. *Duli cunyi*, ch. 34, pp. 27b-28b.
7. *Chengan xinpian*, ch. 9, pp. 21a-22b.
8. *Ibid.*, pp. 14a-19a.
9. *Ibid.*, pp. 20a-20b.
10. *Ibid.*, pp. 12a-13b.
11. *Dingli huipian*, ch. 13, pp. 73a-76a.
12. *Daqing shilu: Qianlong*, pp. 14397-14398, 14415, 14459.
13. *Boan xinpian*, v. 4, pp. 1783-1789.
15. *Daqing luli huiji bianlan*, v. 9, pp. 3736-3737.
14. *Boan xinpian*, v. 4, p. 1783.
16. *Xingan huilan*, v.5, p. 2120.
17. *Daqing shilu: Jiaqing*, p. 2179.
18. *Ibid.*
19. *Ibid.*
20. *Ibid.*

21. *Daqing shilu: Jiaqing*, p. 2370.
22. *Xingan huilan*, v. 5, pp. 2113-2115.
23. Ibid.
24. Ibid., p. 2128.
25. Ibid., p. 2128.
26. *Daqing shilu: Jiaqing*, pp. 2415-2416, 2424-2425.
27. *Xingan huilan*, v.5, p. 2124.
28. Ibid., p. 2125.
29. *Shuotie leipian*, ch. 2, pp. 18a-19a.
30. *Xingan huilan*, v. 5, p. 2119; *Shuotie leipian*, ch. 2, pp. 41a-42b.
31. *Lüliguan shuotie: Jiaqing 19*, no pagination.
32. *Xingan huilan*, v.5, 2112-2113.
33. Ibid., p. 2123
34. Ibid., p. 2124.
35. Ibid., pp. 2116-2117.
36. Ibid., p. 2120.
37. Ibid., pp. 2119-2120.
38. *Xingbu bizhao jiajian chengan*, ch. 11, pp. 2a-2b.
39. *Lüliguan shuotie: Jiaqing 19*, no pagination.
40. *Xingan huilan*, v. 5, p. 2121.
41. *Xingbu bizhao jiajian chengan*, ch. 19, pp. 32b-33a.
42. *Yuedong chengan*, ch. 13, pp. 24b-25a.
43. *Xingbu bizhao jiajian chengan*, ch.23, pp. 2a-2b.
44. Ibid., ch. 21, pp. 6a-6b.
45. *Xingan huilan*, v. 5, p. 2122.

46. *Xingan huilan*, v. 5, p. 2118.
47. *Xingbu bizhao jiajian chengan*, ch. 23, pp. 2a-2b.
48. *Ibid.*, ch. 21, 6a-6b.
49. *Xingan huilan*, v. 6, pp. 2763-2764.
50. *Yuedong chengan chupian*, ch. 13, 28b.
51. *Xingan huilan*, v. 5, 2125-26.
52. *Xuean chumu xupian*, "Insane Homicide," pp. 5a, 14a-14b.
53. *Xingan huilan*, v. 5, p. 2121.
54. *Ibid.*, p. 2113.
55. *Ibid.*, pp. 2121-2122.
56. *Ibid.*, p. 2127.
57. *Ibid.*, pp. 2124-2125.
58. *Ibid.*, p. 2124.
59. *Ibid.*, pp. 2126-2127.
60. *Ibid.*, v. 11, p. 4515.
61. *Xingan huilan xupian*, v. 6, pp. 3022-3024.
62. *Ibid.*, pp. 3036-3037.
63. *Ibid.*, v. 1, pp. 317-318.
64. *Ibid.*, v. 6, pp. 2995-2996.
65. *Ibid.*, v. 8, pp. 3965-3968.
66. *Ibid.*, v. 6, pp. 2993-2995.
67. *Lixue xinpian*. ch. 10, pp. 3b-4a.
68. *Xingan huilan xupian*, v. 6, pp. 3033-3036.
69. *Ibid.*, pp. 2995-2996.
70. *Ibid.*, v. 8, p. 3737.
71. *Ibid.*, v. 6, pp. 2997-2998.

72. *Xingan huilan xupian*, v. 6, pp. 3024-3027.
73. *Ibid.*, pp. 3027-3029.
74. *Ibid.*, pp. 3038-3039.
75. *Ibid.*, 3039-3042.
76. *Qiushen bijiao huian*, II, p. 16b.
77. *Xingan huilan xupian*, v. 6, pp. 3042-3043.
78. *Ibid.*, pp. 2998-3002.
79. *Xingan huilan* , v. 11, p. 5008.
80. *Qiushen bijiao huian*, II, 16b.
81. *Ibid.*
82. *Xingan huilan xupian*, v. 9, p. 4437.
83. *Ibid.*, v. 6 pp. 3005-3007.
84. *Qiushen bijiao huian*, II, p. 16b.
85. *Xingan huilan xupian*, v. 6, pp. 3007-3012..
86. *Qiushen bijiao huian*, II, p. 16b.
87. *Xingan huilan xupian*, v. 5, 2351-2355.
88. *Ibid.*, v. 6, pp. 3019-3022.
89. *Qiushen bijiao huian*, II, p. 16b.
90. *Lixue xinpian*, ch. 10, p. 4b.
91. *Ibid.*, p. 5a.
92. *Jiansha oushang chuanan shili gao*, "Huguang si: Wu Zhaisheng," no pagination.
93. *Lixue xinpian*, ch. 10, p. 2a.
94. *Ibid.*, pp. 5a-5b.
95. *Xingan huilan*, v. 11, p. 4893.
96. *Ibid.*,

97. *Xingan huilan*, v. 11, p. 5061.
98. *Lixue xinpian*, ch. 10, pp. 2a-2b.
99. Ibid., p. 2b.
100. *Xingan huilan*, v. 11, p. 4976.
101. *Lixue xinpian*, ch. 10, pp. 2b-3a.
102. Ibid., pp. 3b-4a.

Addenda

Case:

1. *Xingan huilan*, v. 5, p. 2126.
2. *Xingan huilan xupian*, v. 1, pp. 273-275.
3. Ibid., v. 6, pp. 3003-3005.

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