

*The Juridical System of the Qing Dynasty in Beijing
(1644-1900)*

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Abstract

This dissertation examines how the Qing ruling house balanced relations between Manchu and Han *and* between crown and bureaucracy from the perspective of Qing legal history. I purposely chose to study these questions in Beijing. It was not only the capital but also home to the largest single body of bannermen (Manchus and other ethnic groups under the banner system). Interactions between crown and bureaucracy, on the one hand, and Manchu and Han, on the other, are clearly in focus here.

The research delineates the processes by which the Qing court adopted and revised the Ming juridical system while abandoning its earlier Manchu legal tradition. The early Qing ruler Dorgon tried to impose the Manchu judicial system on the Han people, but he quickly realized the impossibility of the imposition and the necessity of adopting the Ming judicial system. The Qing court gradually recognized the authority of the Qing code (a code based on the Ming code) and even adopted Ming juridical principles on the fundamental issue of Manchu society: the fugitive law that prohibited bannermen, especially slaves, from escaping. Manchus and Han were adjudicated by the Qing code at the same courts in Beijing by the middle Qianlong reign (1736-95). Bannermen's legal privileges were a site of compromise needed to admit the authority of the Han judicial system, and these privileges were actually a sign of Qing sinicization. By analyzing the "normalization" of the law before 1900, or the processes by which the Qing court diminished bannermen's juridical privileges and treated bannermen and civilians more and more "equally," I argue that bannermen's legal privileges were always secondary to sinicization. My study argues against the view that Manchus and

Han were judicially segregated and also strongly supports the Sinocentric historiography with new approaches.

The study considers the relationship between the crown and bureaucrats through the lens of the Qing judicial system. It reveals that in Beijing, the judicial system was composed of various institutions that shared responsibilities and power. This research thus demonstrates that at least in Beijing, the Qing judicial structure was not hierarchically and vertically arranged. I argue instead that power was deliberately divided between branches so that no single institution or person ever became too powerful. The structure was so solid that the late Qing monarchy was unwilling to make major reforms even when the system was working poorly.

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Dynasty and Reign Periods

Ming and Qing dynasties

Ming dynasty	1368 – 1644
Southern Ming dynasty	1644 – 1662
Latter Jin dynasty	1616 – 1636
Qing dynasty (in Manchuria)	1636 – 1944
Qing dynasty	1644 – 1911 (1912)

Qing (Latter Jin) Reign Periods and Abbreviations

Tianming (YZ)	1616 – 1626
Tiancong (TC)	1627 – 1636
Chongde (CD)	1636 – 1643
Shunzhi (SZ)	1644 – 1661
Kangxi (KX)	1662 – 1722
Yongzheng (YZ)	1723 – 1735
Qianlong (QL)	1736 – 1795
Jiaqing (JQ)	1796 – 1820
Daoguang (DG)	1821 – 1850
Xianfeng (XF)	1851 – 1861
Tongzhi (TZ)	1862 – 1874
Guangxu (GX)	1875 – 1908
Xuantong (XT)	1909 – 1911

The Early Qing Rulers

Dorgon	1643 – 1650
Jirgalang	1650 – 1652
Shunzhi (Fulin)	1652 – 1661
Oboi	1661 – 1669
Kangxi (Xuanye)	1669 – 1722

Chapter 1 Introduction

Arabs, Turks, Tartars, Moguls, who had successively overrun India, soon became Hindooized, the barbarian conquerors being, by an eternal law of history, conquered themselves by the superior civilization of their subjects.

Karl Marx (1973: 139)

The Issues

1644 was a year of significance. The Ming Chongzhen emperor (r. 1627-1644) hanged himself. The Ming capital Beijing (Jingshi) fell into the hands of peasant rebels in April 1644, but their rebel leader Li Zicheng failed to establish a ruling dynasty. Instead, Beijing residents soon witnessed an unexpectedly dramatic change. Alien Manchu armies entered Beijing without a battle on June 6 and declared the Qing rule (1644-1912) over all under Heaven (*tianxia* 天下). Beijing became the principal capital of the Qing dynasty, the home place to bannermen¹ and a huge military garrison until the end of Qing rule in

¹ During the Qing dynasty, civilians and bannermen were the two basic groups of persons. The majority of bannermen were Manchus; the majority of civilians were Han. Bannermen include Manchus, Han (Hanjun 汉军), Mongols, Koreans, and other peoples. For detailed information about bannermen, including their privileges, see Mark Elliott (2001). Bannermen in this dissertation refer to any person under the banner system (Eight Banners), or military and civil administrative organization in the Latter Jin (1616-1636) and Qing dynasty (1636-1912).

1912. Considering that the majority people in the Qing empire were Han, the longevity of Qing rule was a miracle.

This dissertation will explain the longevity from the perspective of legal history. The juridical system concerned two key sets of relations in Qing high politics. These were the relations between Manchu and Han, on the one hand, and relations between the crown and ministers on the other. I will answer two questions through analyzing the juridical system of the Qing dynasty in Beijing: what does the legal inequality between Manchu and Han *and* what does the relation between monarchy and minister tell us about the nature and the success of the Qing rule?

I deliberately chose to study these questions in Beijing, or Jingshi.² It was not only the capital but also home to the largest single body of bannermen. Furthermore, Jingshi was the official home district to all bannermen regardless of where they lived. Interactions between crown and bureaucracy, on the one hand, *and* Manchu and Han, on the other, are clearly in focus here. Since after 1644 Jingshi was both the capital and the home place to all bannermen and because in the early Qing period banner cases were sent to Jingshi, an examination of the juridical system at this place carries national significance. In order to understand the Qing juridical system in a broader sense, this dissertation also examines what occurred in the provinces.

This dissertation first considers the Manchu-Han relation by focusing on the legal inequality between Manchu and Han. This consideration provides new perspectives to the debate between two scholarly paradigms that attempt to explain the longevity of the Qing

² This probably is not a term with which readers are familiar. I use Jingshi because it was the official name used by the Qing court. Also, by calling it Beijing or Peking, many scholars give readers an impression that Jingshi was a place inside the city wall or most of Jingshi were urban. As I will illustrate in the next chapter, most places of Jingshi were outside the city wall.

rule. One is the paradigm of sinicization. In the past, the dominant paradigm was sinicization. Many scholars (e.g. Ho, 1967: 191) argued that sinicization was the primary explanation for the Qing miracle. They argue that the Manchus had undergone a process of becoming Chinese, or sinicization, as they adopted the institutions and affects of Chinese civilization.

The sinicization paradigm is challenged by a new paradigm under the “New Qing history”³ school that argues the Manchus maintained a separate identity apart from the Han. With the accessibility of Chinese- and Manchu-language archives in the 1980s, some Qing historians (e.g. Rawski, 1998; Crossley: 1999; Elliot, 2001) argue that the Qing was not a Chinese dynasty but rather a central Asian (or Inner Asian, referring to Manchuria, Mongolia, Chinese Turkistan or Xinjiang, and Tibet) dynasty. Crossley further argues that the eighteen-century Qing was a universal empire whose rulers drew from diverse sources: Confucianism, Daoism, Buddhism, Islamism, Shamanism (Crossley, 1992). The Qianlong Emperor was the Confucian ruler in China Proper, the successor of Chinggis Khaghan in Mongolia, the Buddhist ruler and master priest in Tibet (Crossley, 1999: 224). James Millward argues that during the Qianlong reign, five linguistic or ethnic blocs, Manchus, Han, Mongols, Tibetans, and Muslims, existed “not in starkly hierarchical, but in something more like parallel relationship to each other. Though the empire is centripetal, at the center lies neither an abstract ‘Chinese civilization’ nor even the Confucian Son of Heaven but rather the Aisin Gioro house, in the person of the many-faceted Qing emperor”

³ As Liu Xiaomeng (2010: 3-4) points out, Japanese and Chinese scholars, especially Japanese scholars, have already proposed similar or the same approaches. At most, new Qing history can be called new in the United States. Michael G. Chang (2007: 9) notices that whether the new Qing history “is truly 'new' or simply represents a resurgence of themes that characterized an earlier body of English-language scholarship is open to debate.”

(Millward, 1998: 201). This scholarship argues that the Qing dynasty was a multiethnic empire rather than a Chinese-centered one. These scholars emphasize the Qing ruling house's drawing upon Inner Asian traditions as the key to understanding the Qing miracle.

Not surprisingly, the New Qing historians argue that the Manchus as a group continued to consciously nurture their distinctiveness and so never fully assimilated with Chinese society. But they understand Manchus and bannermen differently. According to Pamela Crossley, when the Eight Banners (*baqi*) were formed, the division of Manchu, Mongol and Hanjun or Chinese-martial was based on cultural affinities rather than biological blood or ancestorship. Hongli (Emperor Qianlong) put a new emphasis upon genealogy. In order to manifest his universalism, Hongli tried to develop a construction of race. For him, race determined culture. To distinguish whether a man was Manchu or not was based on his genealogy, not his cultural skills and proclivities (Crossley, 1990: 5, 21-2). After the middle nineteenth century, war experience, official abandonment and economic destitution forged Manchu's racial and cultural sensibilities and the Republican Revolution reinforced the Manchu ethnic consciousness (Crossley, 1990: 6).

Different from Crossley, Mark Elliott argues that division, inside the banner system, "Manchu", "Mongol" and "Hanjun" were indeed ethnic, though not racial. Elliot disagrees with the concept that ethnicity is "a characteristic of the oppressed and disenfranchised, a collective sentiment that emerges only in the modern context, whereby minority peoples are consciously organized." On the other hand, he agrees that ethnicity is defined as a group that is conscious of its own solidarity, which is marked in ways including "common descent, history, and culture." These groups identify themselves in opposition to others.

One important character of ethnicity is that the authentic “stuff” of ethnicity is less authentic than the constructed belief (Elliott, 2006: 32-35). Elliott states that Manchu ethnicity was constructed with the development of Manchu Banners, in which language and culture were the keys to this construction. “Thinking about the Manchus in ethnic terms is helpful because it enables us to distinguish more easily between a ‘cultural’ group and an ‘ethnic’ group and to understand Manchu ethnic coherence in spite of apparent cultural incoherence”(Elliott, 2001: 17).

Edward Rhoads argues that Manchus were not so much an ethnic group as an occupational caste until the 1890s. While Rhoads also states that the Manchus were the banner people, vice versa, he emphasizes the differentiation among three ethnic divisions inside banner system at the beginning. In the late Qing dynasty, “[T]he Manchus as banner people can be characterized occupationally as a hereditary military caste, similar to the samurai of Tokugawa Japan.” Only in 1890s and 1900s, under the influence of western imperialism and social Darwinism, the Manchus were transformed from an occupational caste to an ethnic group (translation of *zu* or *minzu*) (Rhoads, 2000: 290-2).

Taken together, regardless of different understanding of what it meant to be Manchus, all New Qing historians emphasize Manchu distinctiveness and oppose the sinicization paradigm. It is necessary to point out that the two paradigms are not absolutely exclusive. As Ho Ping-ti (1998: 125) rebukes Rawski,

Rawski constructs a false dichotomy between sinicization and Manchu relations with non-Han peoples of Inner Asia. There is no logical reason to assume that what we have recently learned about Manchu activities means that what we already knew about their rule within China proper and Inner Asia is therefore mistaken... I must also make clear that the growth of Manchu identification with Chinese norms of behavior and patterns of thought need not exclude other forms of identity. To pose such binary choices, as I think Rawski has done, distorts what individuals experience.

Once again, Rawski's argument posits a false dichotomy between being Manchu and becoming Chinese.

Ho clearly states that being Manchu and being Chinese are not a zero-sum game. Similarly, new Qing historian Mark Elliot agrees with Ho by stating that Ho's "viewpoint is entirely consistent with the approach to ethnicity" he adopts (Elliot, 2001: 387). Elliot also states that "the Qing dynastic enterprise depended both on Manchu ability to adapt to Chinese political traditions and on their ability to maintain a separate identity" (Elliot, 2001: 3), even though his study focuses on the latter. Ho and Elliot's position complicates the story. Clearly, the major difference between these two paradigms lies in whether sinicization or maintaining Manchu identity (or both) was the decisive factor to explain the longevity of the Qing rule.

More recent scholarship of Qing local history further complicates the picture. In his study on agrarian configuration and its change in Qing Manchuria, Christopher Isett notices that the Qing emperor's intention of excluding Han from Manchuria between 1689 to 1862 competed with the Han civil bureaucracy's concerns about "the people's livelihood" (*minsheng*) which required the opening of Manchuria to the Han people. Nevertheless, the Qing sovereign and the local government were unable to prevent Han from migrating to Manchuria, and the Qing court failed to separate different communities (such as civilians, serfs and rusticated bannermen) in Manchuria (Isett, 2007: 9, 42, 107-110, 277-8). Wang Liping's (2007) case study on the Manchu-Han relation demonstrates that bannermen in Hangzhou became localized, as they were transformed from conquerors to local inhabitants. The anti-Manchu revolution in the end of the Qing dynasty originated from Han nationalism instead of local Manchu-Han conflicts. These

scholars do not answer whether Manchus were sinicized, but their studies indicate that Manchus and Han became “integrated” in specific places.

Admittedly, this dissertation in no way intends to fully explain the success and longevity of the Qing dynasty. It thus does not ask whether Manchus were assimilated into Chinese society either.⁴ Instead, from a juridical perspective, this study answers a question that previous scholars have not considered: when being Manchu and becoming Chinese conflicted, or when maintaining separate Manchuness and adapting to Chinese civilization could not co-exist, how did the Qing ruling house handle the situation? As Ho Ping-ti (1998: 125) points out, “[G]overning China meant first and foremost developing the capacities to rule China's many hundreds of million of people.” I would say that governing the Qing realm meant first and foremost developing the capacities to rule both Manchu and Han, the two most important peoples in the Qing dynasty. In this sense, an examination of the Qing ruling house's decisions on the inevitable conflicts of upholding Chinese ethics and maintaining Manchuness in the juridical area contributes insights to current scholarship on the Manchu-Han relations, as well as the nature of the Qing rule.

The juridical system in Jingshi is a good window on the question. As mentioned above, Jingshi was their official home to all bannermen even though many lived elsewhere. More importantly, the legal inequality between Manchu and Han was a cornerstone on which some new Qing historians' works are based. Scholars like Rhoads (2000) describe

⁴ Ho Ping-ti points out that “Chinese civilization certainly changes over time, in part because of internal developments and in part because contacts with the very peoples who become sinicized also expand the content of what it can mean to be Chinese” (1998: 125). Clearly, many Manchu traditions are considered Chinese today. One typical example is the Manchu style clothing *qipao* 旗袍 banner gown. The Manchu language influenced Mandarin, the official language of China. However, if we consider the co-existence of being Manchu and being Chinese, it is extremely difficult for historian to conclude to what extent a Manchu was a Chinese or a Manchu in the Qing dynasty, especially in the late Qing.

the Manchu-Han relation as “separate and unequal.” The legal privileges enjoyed by Manchus, or by bannermen in more general sense, was one cornerstone of the separate and unequal Manchu-Han relation. These scholars (e.g. Elliott, 2001: 197-200; Rhoads, 2000: 36, 42-3) generally understand that the Qing juridical system granted bannermen privileges of being treated separately and favorably. For example, Mark Elliott admits that both bannermen and civilians were subject to the same Qing code but considers bannermen “a privileged people” and argues that the Qing court handled cases involving bannermen differently from those involving only civilians and punished bannermen by a different standard of punishments -- or bannermen enjoyed the privileges of commutation. Elliott argues that “Manchu pride, as well as national security, guided the development of banner legal privilege” (Elliott, 2001: 197-200). In short, these scholars considered the juridical segregation and inequality between Manchu and Han a demonstration of the Manchuness of the Qing rule.

For legal historians, the New Qing History’s understanding of the bannermen’s legal privileges is nothing new. For example, an influential legal historian Ch’ü T’ung-Tsu (Ch’ü, 1961: 205) argues that while both Manchu and Han were subject to the Qing code, bannermen still enjoyed privileges in accordance with certain articles of the code. According to Ch’ü, the most notorious privilege was commuting penalties. If a bannerman received penal servitude, exile, or military exile, the court usually commuted the penalties to the punishment of wearing the cangue. Ch’ü believes that these legal inequalities reflect ethnic inequality. Adam Lui (1989: 76) further alleges:

The Manchus, the Mongols and other non-Han races had their different codes of law and sets of law courts. For the Manchus, the *Tsung-jen fu* [*Zongren fu*] and the banner chiefs were responsible for seeing to legal disputes arising among their people. The Mongols, too, had their lawsuits attended to by their own banner chiefs. The *Li-fan yüan* was another

major institution set up by the Manchus to deal with all types of official business of the “outer peoples”, particularly the Mongols. It had, therefore, the responsibility of attending to litigations and other legal matters of these peoples. It would have caused confusion if non-Han peoples were to live together with the Han. Fortunately, the Manchu authorities were politically wise enough to inaugurate the segregation policy, so that different races did not confront one another; otherwise a type of mixed court must be convened to solve complicated legal problems that might arise from peoples with different cultural backgrounds living together.

Lui describes what happened during the Shunzhi period (1644-1661). The view represents a typical argument of juridical segregation between Manchu and Han. The author correctly points out that Han and non-Han peoples had different codes of law and different sets of law courts during the early Shunzhi era but does not consider juridical changes in and after the Shunzhi era.

Taken together, these two accounts point to a discrepancy: on the one hand, Lui argues that Manchus had their own code of laws at least during the Shunzhi reign; on the other hand, Ch’ü and many other scholars argue that Manchus were subject to the Qing code. Since the Qing code begins as a facsimile of the Ming code, putting Manchus under the rule of the code meant in principle that Manchus must abandon their own juridical traditions from Manchuria. We might ask when and why did the Qing ruling house use the Qing code to sentence cases involving bannermen? What was the relation between admitting the authority of the code and granting bannermen legal privilege of commutation?

This study will demonstrate that bannermen’s privilege of commutation was a necessary compromise for the Qing regime to admit the authority of the Qing code and that the legal inequality between Manchu and Han and its changes were always secondary to the universality of the Qing code. Mark Elliot (2001: 200) argues that national security accounted for the bannermen’s privilege of commutation, but such an argument can not

explain why the Qing court would not have simply retained the Manchu penal system to protect the banner soldiers. This dissertation demonstrates that the Qing court put in place the “privilege” of commutation in order to punish bannermen more severely than in the past. Before the coming of this privilege, bannermen’s sentences of penal servitude and exile were simply disregarded. This privilege admitted the authority of the five punishments (death, exile, penal servitude, beating with the light bamboo, beating with the heavy bamboo)⁵ in the Qing code and ended the Manchu two-degree penal system. Wearing the cangue was a compromise between simply ignoring the sentence (in accordance with Manchu law⁶ before 1656) and banishment (in accordance with the Qing code). This suggests a compromise between abolishing Manchu law and admitting the authority of the Qing code. Furthermore, scholars notice that the Qing ruling house extensively diminished the bannermen’s privilege of commutation, and that the Qing court treated bannermen like civilians after 1825 (e.g. DC, 009.05; Lin, 2004: 46). These privileges of commutation held by Manchus were clearly secondary to the Qing agenda of establishing a unified juridical system. Thus, this study deconstructs and overthrows the long-held view that the bannermen's legal privileges served as an important marker of Manchu distinctiveness.⁷

The second issue this dissertation will address is the relation between crown and bureaucracy. The Qing emperors, like other Chinese emperors, always faced challenges

⁵ The five punishments were standard penalties in the Ming and Qing dynasties.

⁶ Manchu law refers to customs and written laws practiced in the pre-1644 Qing dynasty. The Qing court continued applying Manchu law after 1644.

⁷ As Christopher Isett’s analyses on *gugongren* (hired labor) in Manchuria shows, the ethnojuridical difference between bannermen and civilians became almost invisible. As Isett argues, rusticated bannermen, serfs, and civilian commoners in the Manchurian countryside were social equals (Isett, 2007: 160).

from the bureaucracy. While Qing emperors must rely on bureaucracy to rule the realm, they themselves intended to keep their extra-bureaucratic position. Besides the challenge from the bureaucracy, the Manchu minority rule complicated the story. On the one hand, the Qing ruling house must adopt the Chinese bureaucratic system from the former Ming. On the other hand, the court also tried to maintain Manchu ethnic identity. In order to centralize his power and in order to remove the threat posed by Manchu nobles, the Qing monarch gradually integrated the nobility into the bureaucracy by removing the Manchu lords' political power. The struggles that emanated from the consolidation of the emperor's power lasted until the demise of the imperial rule in China. This dissertation considers the crown-minister relation by uncovering the complicated nature of the juridical system of the Qing dynasty in Jingshi.

The complicated nature of the juridical system of the Qing dynasty in the capital bewilders not only later scholars, but also contemporary scholars, visitors, and investigators. Zhenjun, a Manchu scholar in the late Qing and early Republic period, tried to articulate the labyrinth picture of the judicial system in Jingshi. In his book written from 1895 to 1904, *Tianzhi ouwen* (Random notes on the capital), Zhenjun says:

“There are various [yamens⁸] that administer places in Jingshi: the Commander-general of the Metropolitan Infantry Brigade (*Bujun tongling* 步军统领, also translated as the Commandant of the Gendarmerie) takes charges of issues of robbers and thieves of the Inner City; the Outer (wai) [military] battalions (*ying* 营) and posts (*xun* 汛) take charge of issues of [robbers and thieves of] the Outer City; the censors of the Five Wards (*wucheng* 五城) take charge of litigations among lanes; the Street Bureau (*Jiedao Ting* 街道厅) administers streets and roads; the responsibilities of the Shuntian Prefect and its two counties Daxing and Wanping are on the suburbs, and they have no responsibility inside the city walls. However, after following [these rules] for a long time, [these yamens] gradually approach other

⁸ Yamen was the administrative office or office compound, including the office and the official's residence in Qing China.

yamens' jurisdiction. [These yamens] allowed people to take litigations with occasional quarreling words. When they were arrested, [people] just obeyed whatever officials did. Their jurisdictions are not incorporative and people don't know how to follow. Therefore, it's hard to “clean” the capital city partly due to this situation. However, the power of the Commander-general of the Metropolitan Infantry Brigade is a little bit “weighty,” and if the position is served by a qualified official, it will be passable to manage [Jingshi]” (Zhenjun, 1968: 252).

Zhenjun's description tells the complicated nature of the juridical system but it does not clarify the system. Its complicated nature even confused the Japanese intelligence agency in the late Qing. Some investigators stated that Shuntian prefecture and its two subordinate counties, Daxing and Wanping, were important juridical institutions in the capital and they mainly dealt with civil matters (Oda, 2003: 450-451; 460-461). Another Japanese agency argued that the Shuntian prefecture and its two subordinate counties handled cases involving only Han in the Inner City, the Five Wards handled cases involving only Han in the Outer City. It admitted that the three major institutions' jurisdictions were complicated and not clear (Hattori, 1994: 121, 130). The Japanese intelligence agencies contradict Zhenjun.

This dissertation will articulate the juridical structure of the Qing dynasty in Jingshi. By uncovering each institution's origin and its juridical role, this study will explain how the emperor manipulated the bureaucracy and his positional rival banner lords in the Banner system. The study will also analyze the interwoven interactions between the Manchu-Han and crown-bureaucracy relations.

The “Web” Structure

This dissertation is an institutional history. This approach is not only a reemphasis of the “traditional” historiography, but a response to current scholarship of Qing legal and

political history. Scholars often considered Chinese legal history a branch of institutional history. This consideration has in many ways lost vitality, especially in the United States. With the opening of archives on Qing legal case records in China, new scholarship, especially the research group led by Philip Huang, has examined the Qing legal practice and its interaction with social, cultural, and economic actions. Representative works include but are not limited to Philip Huang's (1996) study on the Qing civil justice, Matthew Sommer's (2000) on sexual regulation, and Bradley Reed's (2000) on runner and clerks. Whereas this scholarship extended our understanding of Chinese legal history and also considered institutional changes, some important institutional changes concerning the nature of the Qing rule are still unexplored. The juridical structure in Qing Jingshi is one of these unexplored areas.⁹

This dissertation attempts to reshape our common understanding of the Qing judicial structure. Scholars generally understand that Qing judicial structures “were hierarchically and vertically arranged, from the emperor at the apex to the 1,200 to 1,300 ‘county magistrates’ (*zhixian* 知县) at the bottom, with few lateral connections” (Hegel and Carlitz, 2007: 15). Magistrates could conclude minor cases or cases punishable by bambooing. As far as a major case was concerned, the magistrate must investigate everything clearly and recommend sentences with clear citation of the Qing code. Then the prefecture magistrate and provincial judges must re-investigate, review, and/or re-try the case. If the punishment entailed penal servitude, the sentence would be effective after

⁹ In China and Japan where historians still pay great attention to institutional change in legal studies, the juridical system in Qing Jingshi is still neglected by most scholars. Two Chinese scholars, Zheng Qin (1988) and Na Silu (1992), briefly describe the juridical structure in Qing Jingshi, but their studies have considered neither the story during Ming-Qing transition nor the web structure.

the governor or governor-general's approval -- an exile case would be effective only after the Board of Punishment's (*xingbu* 刑部)¹⁰ approval. Capital cases were usually reviewed by the Three High Courts(*san fa si*三法司)¹¹ and death penalties should be approved by the emperor.

By reconstructing the juridical functions of each institution in Jingshi, this dissertation reveals that in Beijing, the judicial system was composed of various institutions that shared horizontal responsibilities and power. The Qing emperor divided power among branches so that power never concentrated in a single institution or person. The judicial structure in Jingshi was like a “web” structure. This web structure originated in the Shunzhi reign when the Qing court broke the monopoly of judicial power held by the Three High Courts and reached final form during the middle Qianlong reign (1736-1795).

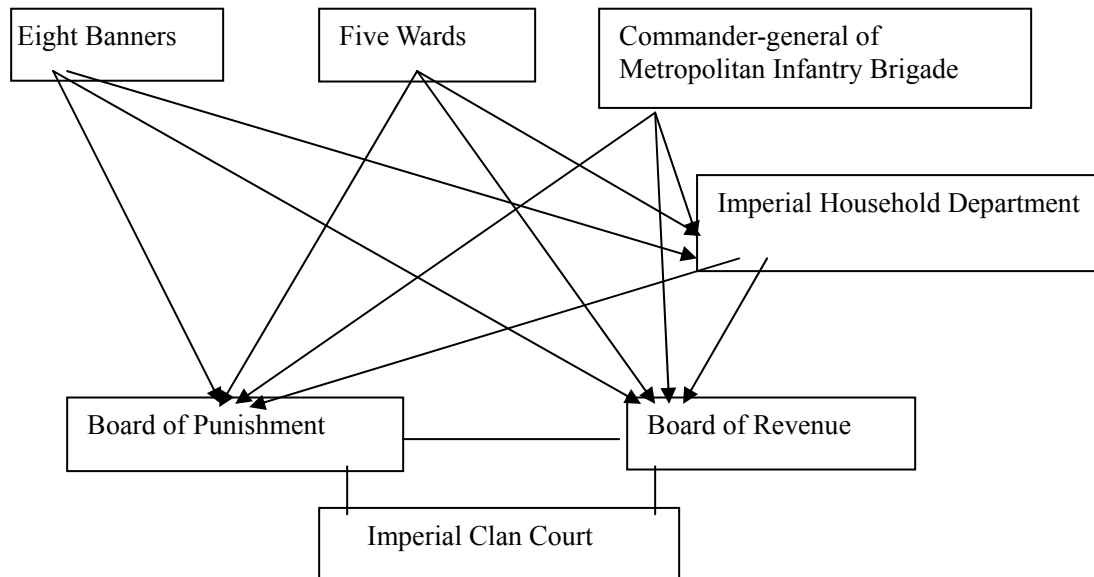
Under the web structure, the judicial procedure was very different from that in the provinces. Both legal identities of the parties to a cases and the nature of the case (e.g. as a land case or as homicide case) determined its judicial procedure. The Yamen of the Commander-general of Metropolitan Infantry Brigade, the Five Wards, the Imperial Household Department (*neiwufu* 内务府), and the Eight Banners directly accepted cases. These institutions were preliminary courts at the first level in the juridical system. Just like counties and departments, they too could settle minor cases. Among them, the Five Wards

¹⁰ There were two capitals in the Qing dynasty. One was Jingshi, the other Shengjing 盛京. Shengjing was the Qing capital in Manchuria. When I say the Board of Punishment, I refer to the one in Jingshi, not the one in Shengjing. Other boards also refer to the ones in Jingshi instead of those in Shengjing.

¹¹ The Three High Courts of Judicature included the Board of Punishment, the Censorate (*ducha yuan* 都察院), and the Great Court of Revision(*dalisi* 大理寺),

and the Commander-general of Metropolitan Infantry Brigade could settle cases involving ordinary bannermen and civilians. If these institutions could not settle a land, marriage or household case involving bannermen, they sent it to the Board of Revenue (*hubu* 户部) (Hu, 2004: 33-34). Because the Imperial Household Department had a very special relation with the emperor, if the Five Wards or other yamens received a case involving a person administrated by the Imperial Household Department, they sent the case to the Imperial Household Department without adjudication.

Table 1.1, The Judicial System of Jingshi after the middle Qianlong Reign (capital cases excluded, edited from Hu, 2007)



The preliminary courts sent major cases to the Board of Punishment or reported them to the emperor. If a land case possibly carried a sentence of penal servitude or higher, the Board of Revenue must co-adjudicate it with the Board of Punishment (Hu, 2004: 34). When the Board of Punishment adjudicated a case in which *The Substatute of the Board of Revenue (hubu zeli)* should be referenced, the Board of Punishment should co-adjudicate

this case with the Board of Revenue (X AHL, *juan mo*, *ce* 871: 489). The preliminary courts must report capital cases to the emperor. Usually, the emperor would order the Three High Courts or just the Board of Punishment to judge these cases. Cases involving members of the imperial lineage, regardless whether they were major ones or minor ones, were usually co-adjudicated by the Imperial Clan Court and either the Board of Punishment or the Board of Revenue (usually for land cases). In short, the judicial structure was just like a web. My research thus demonstrates that the Qing judicial structure was not always hierarchically and vertically arranged.

The web structure experienced few changes between the middle Qianlong reign and the New Policy period (1901-1911). The structure's stability contrasted with the constant changes in other aspects of the Qing juridical system, especially the diminishment of bannermen's legal privileges.

Big Transitions

Big changes are key to understanding any historical development. The Qing juridical system in Jingshi experienced four major transitions from 1644 to 1911. This study will just analyze the first three. The fourth occurred during the New Policies period, which falls outside of this study.

The first transition occurred during the Shunzhi reign when the Qing ruling house abolished its Manchu juridical system and recognized the authority of the Ming juridical system for both Manchu and Han. The transition was far more complex than the substituting of one legal tradition for another might suggest. After failing to impose the Manchu penal system on the Han people, Prince Regent Dorgon (r. 1643-1650) quickly

recognized the legitimacy of Ming juridical system for civilians in the provinces. However, he retained the Manchu system in Jingshi. Because civilians in Jingshi were in many ways under the Manchu juridical system, the Qing court implemented a dual juridical system in the realm -- setting Jingshi apart from the provinces. This dual system did not experience any major change until 1653 when Shunzhi took power in person. As an emperor who embraced Han civilization, he initiated a great juridical transformation which I call the “Shunzhi Restoration” from 1653 to 1656. In 1656, after the Qing ruling house promulgated the Qing code in Manchu language and put bannermen under the authority of the five punishments in the code, both Manchus and Han in the realm were under a unified juridical system based on the Qing code.

The second transition occurred largely from the Yongzheng reign (1723-1735) to the middle Qianlong reign. The emperor consolidated his power by re-setting the juridical power of the institutions that administered bannermen. Since they no longer regularly adjudicated cases independently, the Eight Banners and the Imperial Clan Court lost much of their judicial power. Conversely, the Imperial Household Department gained the power to adjudicate any minor cases involving its own members. Ordinary bannermen and civilians’ legal identities became unimportant in deciding which institution adjudicated a minor case. The Five Wards and the Commander-general of the Gendarmerie now could settle minor cases involving ordinary bannermen and civilians. Therefore, after the mid-Qianlong reign, in deciding where a minor case was adjudicated, severity of offenses was more significant than the legal identities (either as bannermen or civilians) of those involved. Meanwhile, the “web” judicial structure in Jingshi stabilized and experienced few changes thereafter.

The third transition happened during the Daoguang reign (1821-1850). I thus call it the “Daoguang transition.” The normalization of the law which diminished banner juridical privileges treated bannermen similarly with civilians. The revision of the fugitive law during the Daoguang reign effectively permitted bannermen to leave the banner system. A substitute under the statute “Committing Crimes and Avoiding Banishment” (*fan zui mian faqian* 犯罪免发遣) almost ended the statute’s principles of preserving bannermen’s privileges of commutation. Untitled imperial clansmen without official posts no longer enjoyed the privilege of commutation when intentionally committing minor crimes. Bannermen were a privileged people, but the Qing court never hesitated to diminish their privileges when the court considered that necessary. The juridical changes in the nineteenth century, especially under the Daoguang reign, implied that abolishing the legal inequality between Manchu and Han during the early twentieth century was not just modernization of the juridical system along Western lines but also carried strong internal dynamics and heritages.

Emphasizing the importance of big transitions in no way negates the historical significance of “ordinary” years. These big changes never came suddenly or without precedence. As seen in its adoption of Ming juridical institutions and systems prior to 1644, the Qing court continually adjusted its juridical system based on social practices and legal traditions. The backbone of the web juridical structure formed during the late Shunzhi period and reached its final form in the middle Qianlong reign. Similarly, the Qing ruling house chipped away bannermen’s privileges throughout the whole Qing dynasty. In short, these turning points were expressions of the long-term changes and tendencies.

The Ming-Qing Transition, the Dual System, the Shunzhi Restoration, and Sinicization

Each transition carried different weight. The most important changes came early during the Shunzhi reign. Before 1653, the Qing court continued to apply the Manchu juridical system, which the Ming system influenced but still carried numerous Manchu traditions. However, Shunzhi adopted the Ming juridical system and abolished many Manchu traditions from 1653 to 1656. Even though his successor the Oboi (Chinese: Aobai 鳌拜) Regency (1661-1669) denounced his accommodation of Chinese practice, the Oboi Regency retained many institutions and systems established by Shunzhi, including the juridical system. The juridical system established during the Shunzhi period formed the basis of the whole Qing system until 1906.

The Shunzhi Restoration demonstrates the continuity between Ming and Qing and reshapes the significance of the Ming-Qing transition -- the processes by which the alien Qing regime conquered Ming. Even though previous scholars generally recognized the importance of institutional and other continuities from Ming to Qing (e.g. Spence and Wills, 1979), they seldom considered that the Ming-Qing transition was also a process through which Han “conquered” Manchus, the Ming “conquered” the Qing. In this respect, the Ming-Qing transition was a “Qing-Ming” transition.¹²

From 1644 to 1653, Qing juridical policy was to impose a dual system in China. After failing to impose the Manchu juridical system on the Han people in 1644, Prince Regent Dorgon quickly recognized the necessity to retain the Ming system. The Qing court

¹² My analyses are on the same line with the traditional sinicization paradigm, but my study delineates the diminishment and disappearance of the Manchu traditions.

applied the Ming code in the provinces no later than 1645. Whereas in the provinces Ming law was enforced, in Jingshi, Manchus continued their own juridical traditions. Jingshi civilians were also under the dominance of the Manchu legal traditions. In the provinces, the Qing dynasty inherited the Ming juridical system, and the Han codes (the Ming and Qing codes) enjoyed authority. In Jingshi, the juridical system was a mixture of both the Ming and Manchu systems as jurists applied both the Han codes and Manchu law, but the Manchu system predominated. Also, the Manchu penal system always prevailed in Jingshi, while in the provinces the Manchu penal system quickly retreated and was replaced by the five punishments in the Ming code in 1645. Hence, the dual system, instead of segregation, is the more appropriate term to characterize the juridical system of the Qing dynasty from 1644 to 1653. The dual-system denotes that there were different legal codes, juridical procedures, verdict formats, and penal systems between Jingshi and the provinces. Such a dual-system was formed by the Manchu minority rule and Jingshi's special status as the capital.

The Shunzhi emperor abolished the dual system shortly after he personally assumed power in 1652. From 1653 to 1656, the Qing code gradually supplanted Manchu law. The Qing court placed banner men and civilians in Jingshi under the mandate of the five punishments. The Three High Courts reviewed most capital cases originated in Jingshi as they did for the provinces. The Qing court restored both the Autumn Assizes (*qiushen* 秋审) and Court Assizes (*chaoshen* 朝审) in the provinces and Jingshi. By 1656, the Qing ruling house had imposed a unified juridical system in China. The Qing jurists applied the same Qing code, the same formats of verdicts, the same review process for capital cases, and the same penal system in both Jingshi and the provinces, among both Manchus and

the Han people. I characterize these changes as the Shunzhi Restoration because they occurred during the years from 1653 to 1656 when Shunzhi held power in person, because these changes were most likely motivated by Shunzhi himself, and because Shunzhi in many ways restored the Ming juridical system.

One outcome of the Shunzhi Restoration was that the Qing court granted bannermen the privilege of commutation for the sentence of banishment. Before 1656, by following the Manchu penal system, the Qing court simply exempted bannermen from banishment for crimes that under the Qing code received a sentence of military exile, exile or penal servitude. In 1656 when bannermen came under the unified code, the Qing court also exempted bannermen from banishment—instead substituting wearing the cangue. Because regulations of the five punishments in the Qing code determined the time length of wearing the cangue, the privilege admitted the authority of the five punishments. Thus, the Qing code enjoyed authority not only in the process of defining the nature of crimes but also in implementing the punishments. Furthermore, wearing the cangue was not a Manchu but a Han penalty. Bannermen were still punished by lashing with the whip instead of beating with bamboo. But after 1656, the number of the lashes of the whip was determined by the Qing code, not by Manchu law. Even though Manchus and Han, or bannermen and civilians, were treated differently under the Qing code, throughout the dynasty this different treatment was only secondary to Han legal principles and suggested an abandonment of much of the Manchu legal tradition. In 1656, the dual system ended and for the most part Manchus came under the rule of the Qing code.

The Shunzhi Restoration was the most important step in the adoption of the Ming juridical system. The juridical segregation and inequality existed but were always

secondary to the universality of the Qing code. Whenever maintaining banner juridical privileges conflicted with Han juridical or moral principles the Qing ruling house in many cases upheld the latter. For example, when bannermen's privilege of commutation violated Confucian ethics, the Qing court tended to protect the latter.

This tendency is clearly seen in the Qing court's changing positions on the fugitive law and fugitive cases. Slavery was the base of Manchu society but did not fit Han society. A strict fugitive law was implemented after 1644 when tens of thousands of slaves fled from their banner masters. The struggle over the fugitive law between Manchu and Han experienced many turnings, but the ultimate winners were the Han as Han legal principles gradually influenced and prevailed over the fugitive law. The law's principal goal changed from maintaining slavery to preventing bannermen from leaving the post.

At last, it is worth noting that sinicization was not a "one-way" process. Also as Ho Ping-ti points out, "Chinese civilization certainly changes over time ... in part because contacts with the very peoples who become sinicized also expand the content of what it can mean to be Chinese." Even though "barbarian" conquerors were "conquered themselves by the superior civilization of their subjects," Manchus contributed to the Qing juridical system and changed the Qing code. Current scholarship in mainland China (e.g. Yang, 2010) has shown that Manchus not only "accepted" but also "revised" Chinese orthodoxy and that Manchus accepted "Chinese identity" (e.g. Huang, 2011). This dissertation will show that Manchus not only inherited but also revised and contributed to Han or Chinese juridical system.

Key Terms

Emperor

The “emperor” refers to the institution of emperorship. The emperor’s power could be held by the emperor himself, the emperor’s father (like Zaifeng and Qianlong), the emperor’s mother (Empress Dowager Cixi), the emperor’s uncle (Dorgon), or Manchu nobles like Oboi. In this dissertation, the emperor can sometimes refer to the actual ruler. Sometimes, in order to emphasize the Qing ruler’s personality, I will use their names like Dorgon, Shunzhi, or Oboi.

Cases (*anjian* 案件)

Historians have been categorized cases in Qing China into two groups, major cases and minor cases. A case punishable by penal servitude or more severe was a major one. Cases punishable by beating with the light or heavy bamboo were minor ones. This dichotomy was in accordance with the five punishments in the Ming and Qing codes. I also follow this categorization. What I have to clarify is that minor cases not only referred to cases punishable by beating with the light or heavy bamboo but also to cases in which no crimes can be charged (*wu zui ke ke anjian* 无罪可科案件) or non-criminal cases. The term, non-criminal cases, was widely mentioned in Qing records. When I mention a case, it refers to a criminal or non-criminal case. Another point I have to clarify is that before 1653, the Manchu penal system predominated in Jingshi, so the demarcation based on the five punishments did not make sense. But I still use major or minor cases. Minor cases referred those that could be concluded by the preliminary courts like the Five Wards; major cases referred to those that must be sent to the Board of Punishment.

It is also worth noting that minor cases were not civil cases as modern scholars apply the Western terminology to describe cases in Qing China. If a minor case concerned crimes, in which usually the punishment of beating with bamboos was imposed, it was a typical minor but criminal case. As I discuss elsewhere, many non-criminal cases could be considered “civil” cases, but such a consideration is our understanding, and not all non-criminal cases are civil cases as we understand. Thus, non-criminal cases were the only accurate term of the day.

I would like to explain the difference between cases originating in Jingshi and immediate examination cases (*xianshen anjian* 现审案件). All cases originating in Jingshi that were adjudicated by the Board of Punishment were immediate examination cases. Not all immediate examination cases were from Jingshi. During the early Qing dynasty, local officials could not adjudicate cases involving bannermen (anyone under the banner system). These cases were also sent to the Board of Punishment in Jingshi as immediate examination cases. This is understandable because Jingshi was the home place to all bannermen. Both types of immediate examination cases followed the same mechanism after the Board accepted them. In my analyses, I will also draw on immediate examination cases happened outside of Jingshi.

Manchu and bannerman

Basically, I use bannerman as a legal status, Manchu as an ethnic status. Their relation was very complicated in Chinese sources in the early Qing. Based on numerous cases, I articulate the following three points. First, there were two meanings of the term Manchu (man 满 or manzhou 满洲). One referred to Manchus in the banner system; the other to all bannermen. Both meanings were widely used in Qing records. Second, a

bannerman could be Han. For example, famous literati Chen Mingxia 陈名夏 submitted to the Qing court after 1644 and became a bannerman later, but he could hardly be considered a Manchu. Hong Chengchou 洪承畴, a famous Ming general and literati, submitted to the Qing dynasty before 1644 and became a bannerman, but nobody (including he himself) considered him a Manchu. For some Han people, the bannerman status might be more like a burden or even a punishment. Lastly, bannermen could simply mean regular bannermen (*zhengshen qiren* 正身旗人)¹³. Sometimes, it referred to everyone under the banner system. For example, a slave under the banner system, who was most probably ethnically Han and tried to escape, was also a bannerman.

It is worth noting that in the early Qing, many low status bannermen (*xiadeng qiren* 下等旗人) such as slaves and servants enjoyed lots of legal privileges just due to their legal status as bannermen, but some of them could hardly be considered Manchus. Like other bannermen, a servant or a slave under the banner system could be exempted from banishment when he committed crimes punishable by military exile, exile, or penal servitude. Though they also enjoyed many legal privileges, the fugitive phenomenon shows that these bannermen were actually oppressed by their masters. Many of such low status bannermen successfully fled the banner system and became free persons.

When I use the term Manchu juridical system, it refers to the pre-1644 Qing system, which had been already influenced by the Ming system but was clearly different from the Ming one. Similiary, other terms preceded by “Manchu” referred to the pre-1644 Qing system.

¹³ They usually referred to non-servent bannermen, but bondservent could also be regular bannermen. See Mark Elliott's (2001: 83) explanation.

Dongren 东人

After 1644, the term *dongren* or eastern persons was widely used in Qing records. It referred to persons from Manchuria. Similarly, *dongbing* 东兵 referred to soldiers from Manchuria and *dongfu* 东妇 women from Manchuria. *Dongren* was almost a synonym of persons under the banner system. But in many cases, *dongren* specifically referred to slaves. In Qing records, a person who was captured by Manchus in China proper after 1644 and became a Manchu's slave could also be categorized as a *dongren*.

Slaves (*nu* 奴)

Slave was a complicated term in the banner system. It could refer to a high official or a mean people (*jianmin* 贱民). In theory, all bannermen including high officials could be called “slave” of their banner lords. Similarly, bannermen officials could call themselves “slaves” (*nucai* 奴才) before the emperor. Second, there was a master-slave or master-servant relation between bondservants and their masters. In fact, many bondservants, especially those of the Upper Three Banners, were more like regular bannermen than slaves, and they could be high officials. Third, the term slave could refer to real slaves as counterpart of Chinese terms *qixia jianu* 旗下家奴 or *nupu* 奴仆 (slaves and servants under the banner system) or other similar characters like *manzhou jiaren* (满洲家人 housemen of Manchus). *Touchong* or touchong bannermen¹⁴ were part of such real slaves. These real slaves were usually mean people.

The nominal master-slave or master-servant extensively existed in banner society throughout the whole Qing dynasty. But after the Yongzheng reign, regular bannermen

¹⁴ *Touchong* 投充 bannermen were the Han people who offered themselves to bannermen.

under the Lower Five Banners were also direct subjects of the emperor. Many slaves also became de facto tenants of their masters after the Shunzhi reign.

Han, Chinese, and civilians (*minren* 民人)

In Qing China, the majority population was ethnically Han. Han should be distinguished from Chinese. Both *zhongguo ren* (lit. persons of the Central Kingdom or Chinese) and Han were widely used in traditional Chinese texts, but the two should not be considered complete interchangeable. Han was obviously part of *zhongguo ren* or Chinese. The term civilian indicated a legal status and that a person was outside the military system. The banner system was a major military system in Qing China. Civilians mainly referred to Han since the people outside the banner system were mainly Han.

Sources

The principal source for this study is Qing archives. They are located both in Beijing and in Taipei. I began my archive reading in the First Historical Archives of China in 2001. I collected archives in 2001-3, 2006, 2007, and 2008 when I studied or stayed in Beijing. I collected more than seven hundred files that originated from Shunzhi to the Guangxu (1875-1908) period. The East Asian Library in the University of Minnesota subscribed to the Grand Secretariat Archives located in Academic Sinica in Taipei. I am fortunate in having the access to the resourceful archives on campus. I was able to collect more than 1400 files. My study focuses on the Shunzhi era. I read all extant Shunzhi archives in Chinese text concerning cases involving bannermen and cases originating in Jingshi. Unfortunately, there are few extant archives from the late Shunzhi era (after 1656) and

Oboi Regency period. The detailed juridical changes during the Oboi Regency are still not clear.

The majority of the archives I use in this dissertation are legal cases and some relevant legal materials, such as regulations and the records of legislations. Most of them are routine memorials (*tiben* 题本). These memorials are preserved in both Beijing and Taipei. The system of routine memorials was inherited from the Ming dynasty. These memorials were submitted to the emperor by ministers like governors, governor-generals, inspectors, or ministers of the Six Boards. These memorials usually were firstly dealt with by the Grand Secretaries. The emperor made final decisions on handling these memorials. Because of the way in which these memorials were preserved, we usually can only see the memorials themselves and the final vermilion rescript (*pihong* 披红). The vermilion rescript represented the emperor's orders, though it was usually drafted by the Grand Secretaries. It was not unusual that a vermilion rescript changed the recommended verdict proposed by the Three High Courts, the Board of Punishment or other institutions.

The routine memorials were especially important in the early Qing. Different from the middle Qing period when the Qing government had used the secret memorials (*zouzhe* 奏折), the routine memorials were the major communication media between the crown and the minister in the early Qing. Because archives formed in the Shunzhi and early Kangxi (1662-1722) reigns in each institution like the Board of Punishment no longer exist, routine memorials are rare records to look at the history of this period. Furthermore, because Jingshi was the home place to all bannermen and because local officials did not have authority to adjudicate cases involving any person under the banner system, cases concerning bannermen occurred outside Jingshi also must be brought to the Board of

Punishment as immediate examination cases in the early Qing. Many routine memorials submitted by the Board of Punishment and the Three High Courts concerned the adjudication of cases involving bannermen, and these cases offer us a window into the adjudication of banner cases.

Evidence for this dissertation is also drawn from records at the Archives of the Board of Punishment, Archives of the Imperial Clan Court (*zongrenfu* 宗人府), Archives of Eight Banner Command Yamens (*baqi dutong yamen* 八旗都统衙门), Archives of the Yamen of the Commander-general of the Metropolitan Infantry Brigade, and Archives of the Imperial Household Department. These archives not only tell how these yamens handled legal cases but also how other institutions did. In Jingshi, if a bannerman was involved in a case, after the institution (e.g. the Board of Punishment) made decisions on the case, the institution sent a copy of the results to the bannerman's organization: regular bannermen, to the Eight Banners; imperial clansmen, to the Imperial Clan Court and the Eight Banners; persons administered by the Imperial Household Department, to the Imperial Household Department.

Besides archives, other Qing official records are also necessities. The Qing code, the Veritable Records (*Shilu*), the Collected Statutes of the Qing Dynasty (*Qing huidian*), and the Collected Institutes and Precedents of the Qing Dynasty (*Qing huidian shili*) and other Qing official records like *zeli* (precedents and regulations) of each yamen were all necessary to look into the juridical system in Jingshi, especially the system on the book. Careful reading reveals that many records are not reliable, but these officially commissioned books do provide important information, and their importance is next only to archives.

Other sources include personal notes, anthologies, and the most of all, the commentaries on legal codes. As contemporaries, these authors show their invaluable insights on the juridical system of the day. Xue Yunsheng's *Lingering Doubts after Reading the Substatutes (Du li cun yi)* is one of the most important commentaries to track the changes of the Qing code.

For the period before 1644, I heavily rely on previous scholarship and Chinese translation of Manchu documents. Scholars who can read Manchu have done significant research in describing the Manchu juridical system before 1644. After 1644, most routine memorials regarding legal issues were bilingual. Among cases I read, verdicts after 1644 in Chinese were consistent with those of the Manchu version that have been translated into Chinese. One may assume that current scholars' understanding of Manchu is unable to match the translators' in the Qing court three hundred years ago. Also, I am mainly concerned what the punishments the criminals received and what the law the jurists applied, the Chinese version should be reliable enough. Definitely, some documents were only written in Manchu, but some these Manchu documents have been translated into Chinese. Since this dissertation does not intend to detail the story of the Manchu juridical system and its focus is the Han juridical system, my lack of direct usage of the Manchu materials should not severely impair the scholarly value of this dissertation.

Scope and Structure

This dissertation delineates the juridical system in Jingshi and its changes from 1644 to 1900. It extends back to the relevant issues of both the Ming and the pre-1644 Qing (or Manchu) juridical systems. It will not discuss what occurred during the New Policy period.

But since the Qing court continued its juridical system until 1906 when the court abolished the Board of Punishment, this dissertation will draw upon a few sources between 1900 and 1906. Since Jingshi was the home place to all bannermen, my description will cover all bannermen before 1656. In terms of the normalization of the law, bannermen also refer to all bannermen in both Jingshi and the provinces. However, this dissertation will not analyze the jurisdiction over bannermen in the provinces after the Shunzhi era when the Qing court had begun to localize bannermen outside Jingshi.

Chapter Two provides background information for this dissertation. It begins with the introduction of Jingshi, its administrative institutions and the residents. Jingshi consisted of three parts: the Inner City, the Outer City, and the *chengshu* (belonging to the city) area. Most Jingshi areas were actually rural. The majority residents in the Inner City were bannermen, and those outside the Inner City were civilians. As the imperial center, Jingshi was directly under imperial rule. The distinction between local and center blurred. The chapter then describes the inherited Ming juridical system in Jingshi and the Manchu system before 1644. The Manchu system had been influenced by the Ming system but it carried full of Manchu characteristics. Conflicts and compromises were about to occur when the Qing army took Jingshi in 1644.

Chapter Three to Chapter Five analyze the juridical system during the Shunzhi reign. Chapter Three deals with the juridical procedure in Jingshi. After 1644, the Qing dynasty inherited both the Ming and the pre-1644 Qing systems. The juridical procedure basically consisted of two levels. The first level mainly referred to the company captainship in the banner system, the censors of the Five Wards (*xuncheng yushi* 巡城御史), and the Board of War. The second level was the Board of Punishment. Preliminary courts in the first

level could conclude minor cases but due to the special jurisdiction over bannermen, the Five Wards must send any case involving bannermen to the Board of Punishment before 1653; so did the banner system have to send cases involving civilians. But all major cases were usually adjudicated by the Board of Punishment.

Chapter Four discusses conflicts between the two penal systems. One was the Manchu penal system which basically consisted of two degrees of punishments: death and whipping. There were other various punishments in the Manchu penal system, such as hamstringing, but these various Manchu punishments were not important and were eventually abolished. The other one was the Han penal system of the five punishments based on the Ming and Qing codes. Before 1653, the Manchu penal system prevailed in Jingshi. From 1653 to 1656, the Qing court applied the Han penal system to civilians but bannermen were still under the authority of the Manchu penal system. In 1656, the Qing court made both bannermen and civilians, nominally or actually, under the authority of the five punishments.

Chapter Five discusses the application of the laws -- the Han codes and Manchu law. In the provinces, Qing jurists applied the Ming code no later than 1645 and the jurists cited the code relatively clearly. In Jingshi, by following the Manchu tradition, the jurists in the Board of Punishment usually did not directly cite any law before 1653. But clearly, both Manchu law and the Han codes were applied. From 1653 on, the Qing emperor had had jurists cite the Qing code clearly and civilians were basically sentenced by the Qing code. From 1653 to 1656, we also see that the Qing court gradually applied the Qing code in sentencing cases involving bannermen. In 1656, bannermen were also under the

authority of the Qing code. Gradually, articles of Manchu law were either abolished or added to the Qing code.

Chapter Six analyzes the evolution of the fugitive law and the adjudication of the fugitive cases. Because most slaves were ethnically Han, the fugitive law became the focus of Manchu-Han conflict. The Han juridical principles gradually prevailed over the fugitive law, and the law evolved from a Manchu law to a Qing law. By the middle Qianlong reign, the legal inequality between Manchu and Han in the fugitive law had vanished. During the Daoguang transition, the fugitive law actually permitted regular bannermen to flee from the banner system. Meanwhile, the adjudication of the fugitive cases also became “normal” from “special” from the Shunzhi to the Kangxi period. The Qing court handled fugitive cases like other cases involving bannermen.

Chapter Seven delineates the juridical changes after the Shunzhi era. By the mid-Qianlong reign, the web structure reached its final form, and severity of offenses substituted for legal identities to decide where a case involving regular bannermen or civilians should be tried. The Qing court continued to restrict and eliminate bannermen’s legal privileges. By the Daoguang reign, the Qing court not only treated regular bannermen almost as civilians, but also significantly diminished the imperial clansmen’s legal privileges.

In summary, this study reveals not only the unique juridical structure in Jingshi but also the general tendency that the Qing ruling house handled the Han and Manchu juridical heritages. Definitely, the post-1644 Qing juridical system was different from both the Ming and Manchu system. Yet as scholars have considered Ming-Qing China a time unit, this dissertation demonstrates that adopting the Han juridical system always

overwhelmed the attempt to maintain the Manchu heritage and bannermen's juridical privileges. From a juridical perspective, maintaining Manchu identity was always secondary to the sinicization agenda. In this sense, Chinese civilization carried an unstoppable charm to attract non-Chinese.

Chapter 2 Setting the Scene: Jingshi, the Inherited Ming and Manchu Juridical Systems

This chapter provides background information for the dissertation. To understand the history of the juridical system in Qing Jingshi, it is necessary to know where Qing Jingshi was, what institutions administered the place, who lived there, and what juridical system the post-1644 Qing dynasty inherited from the Ming dynasty and the pre-1644 Qing dynasty.

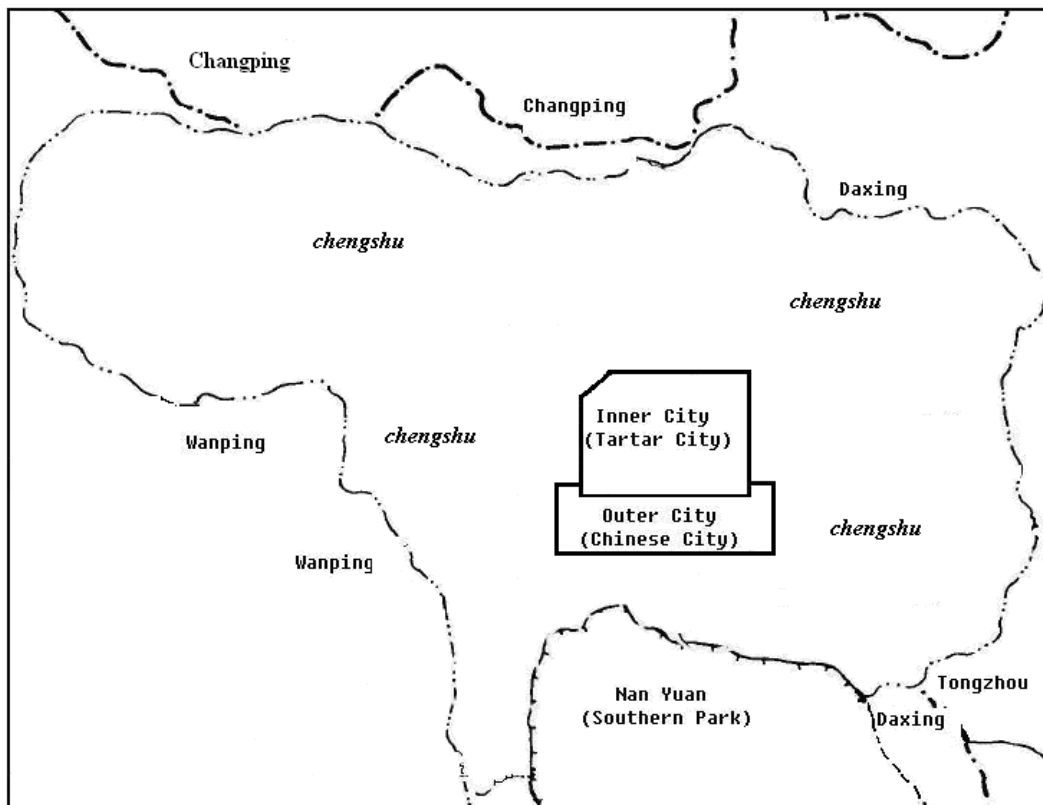
I. Jingshi

Numerous scholars have introduced Qing Jingshi from different perspectives. An introduction nevertheless is not redundant since some readers are still not so familiar with Qing Jingshi. More importantly, many scholars, especially those in English-speaking world, do not exactly know where Qing Jingshi was and what institutions really administered Jingshi.

The Space

Beijing is a city with a long history. As early as three thousand years ago, when the Western Zhou dynasty (1046 -771 BC) implemented the so-called enfeoffment (*fenfeng* 分封) system, a kingdom named Ji was founded and its capital was in present Beijing. Later, the Yan Kingdom incorporated Ji (Tang, 2000: 19-23). Beijing as the national capital in a unified dynasty began with the Mongol Yuan dynasty (1279-1367) and then it

was called Dadu or Great Capital. Zhu Yuanzhang, the first Ming (1368-1644) emperor who expelled the Mongols, decided to make Nanjing the new dynasty's capital. However, in 1421, Zhu Di, Zhu Yuanzhang's son who took the emperorship from Zhu Yuanzhang's grandson, relocated the capital to Beijing. The city's physical appearance, its walls and gates, was mainly formed during the Ming.



Map 1.1. Qing Jingshi: Inner City, Outer City and *chengshu*¹⁵

During the Qing dynasty, Beijing, officially known as Jingshi, physically consisted of three sections: the Inner City, the Outer City and the *chengshu* (城属 or belonging to the city) (Map 1.1). The Inner City and Outer City were usually considered Jingshi's urban area, even though most parts of the Outer City were not populated until the very end

¹⁵ This map is based on Han Guanghui (1999: 135) with editing.

of the dynasty, while the *chengshu* was outside of the city wall.

a. The Inner City

In Qing official records (KXHD, vol. 231: 6513; YZHD, vol. 197: 13294; JQHD, vol. 45: 2115; GXHD, vol. 58: 221),¹⁶ the Inner City is also called Jingcheng 京城 or Ducheng 都城 -- both mean the capital city. During the Qing dynasty, the Inner City maintained its Ming structure, which included three tiers of “cities” or three nested sets of walls. The Inner City was roughly like a square. The first layer was the core of the Inner City, or the Forbidden City (*Zijin Cheng* 紫禁城 Purple Forbidden City). The Forbidden City was also called the Palace City (*Gongcheng* 宫城) in which the emperor, his servants, and his wives/concubines resided. Outside of the Forbidden City was the second layer, the Imperial City (*Huangcheng* 皇城). During the Ming dynasty, commoners were forbidden from entering to the Imperial City. During the Qing dynasty, it was where Manchu bannermen including nobles resided. But commoners could enter the rear part of the Imperial City (Zhu, 1982: 27). The Imperial City was set in the center of Inner City that was the third layer. The Inner City had a perimeter of forty *li*.¹⁷ The Inner City had nine gates through which it connected with the Outer City and the *chengshu* areas. (See Map 1.2.)

b. The Outer City

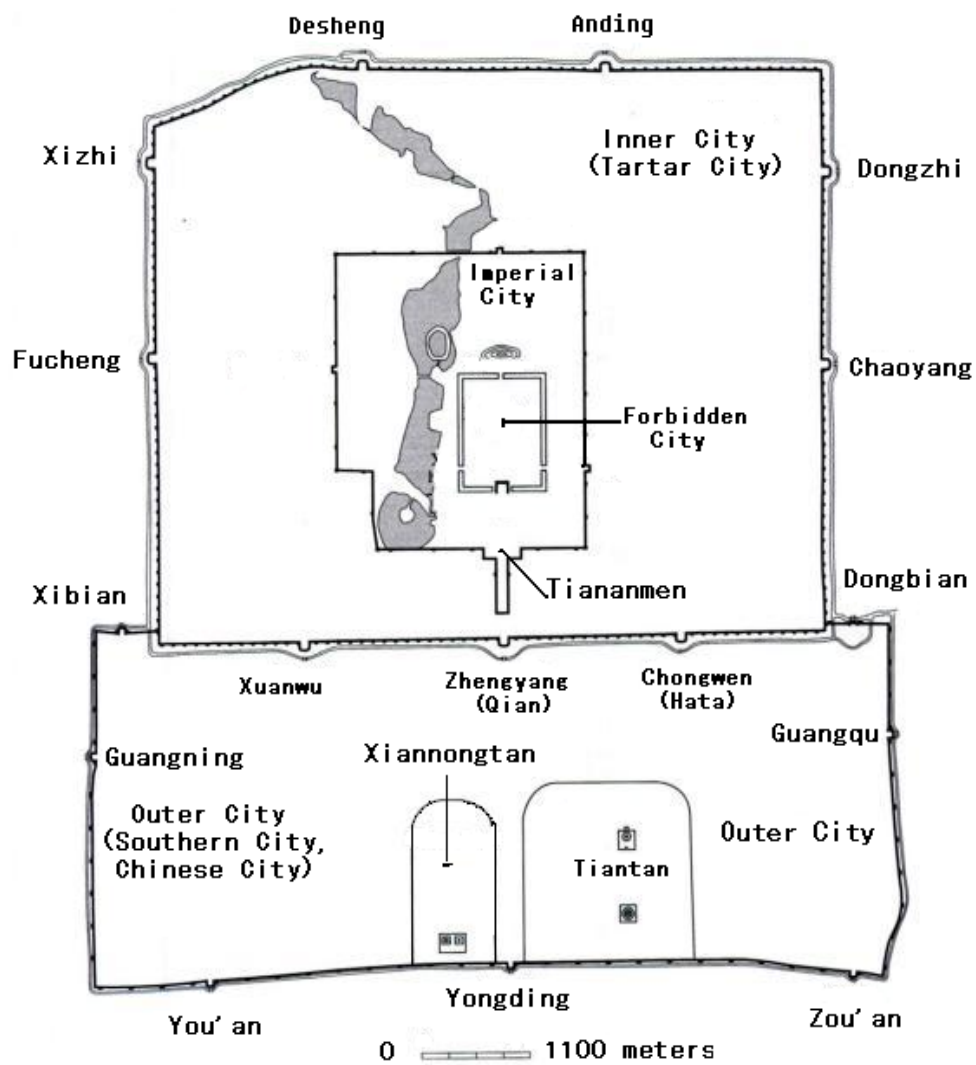
The Outer City was built during the sixteenth century in response to the invasion of Mongols. The Outer City and Inner City were connected through the Front Three Gates

¹⁶ The Qianlong *Da Qing huidian* indicates that Ducheng or the capital city includes both the Inner City and the Outer City (QLHD, vol. 72: 1-2).

¹⁷ One *li* is about one third miles.

(*qian san men* 前三门): Xuanwu, Zhengyang, and Chongwen gates. Seven gates connected the Outer City with the *chengshu*. During the Ming dynasty, the Outer City was attached to the south of Inner City and became the Southern Ward (*nancheng* 南城 lit. Southern City) of Jingshi while the Inner City consisted of Eastern, Middle, Western, and Northern wards. The Outer City was also named the Southern City during the Ming. The Qing dynasty continued to call the Outer City the Southern City.

Map 1.2. Qing Jingshi, City Walls and Gates¹⁸



¹⁸ This map is based on Susan Naquin (2000: 5) with editing.

c. The *Chengshu*

Many scholars (e.g. Na, 1992: 85; Belsky, 2005: 75) consider that Jingshi referred to a city within walls and gates of the Outer and Inner cities while neglect the *chengshu*. Some others (Zhu, 2004, 66-67; Belsky, 2005: 175) misunderstand the relationship between Jingshi and the capital prefecture—Shuntian Prefecture and argue that the whole Jingshi was under the administration of Shuntian Prefecture. There were some relationships between Jingshi and Shuntian Prefecture, but Shuntian Prefecture and its two capital counties, Daxing and Wanping, were just nominal governments of Jingshi, and Jingshi was actually an independent place from Shuntian Prefecture.

Jingshi referred not only to the place inside the city wall but also to the city's vicinities. There was a special term—*chengshu*—to describe the suburbs of Qing Jingshi. Some contemporary scholars also used the term *waixiang* (外廂) or outside of the city gates (Zhu, 1982). Due to the Ming-Qing transition, the border line between Jingshi and other counties or departments of Shunzhi prefecture was not clear.¹⁹ Qing official sources show that before 1727, Jingshi's Five Wards definitely already had their boundary line, but there were no boundary signs between *chengshu* and other counties or departments of Shuntian Prefecture. In 1727, the Qing emperor ordered that boundary signs be set up between the Five Wards and other counties or departments of Shuntian Prefecture (GXHDSL, vol. 1032: 361-2). In 1734, when the Qing court stipulated Jingshi's boundary,

¹⁹ In early 1655, the Daxing magistrate memorialized the emperor to clarify the jurisdiction between Jingshi and the two capital counties. The magistrate stated it that was the ancient system that the Five Wards and the patrolling and arresting battalions administered the areas within forty *li* from the city gates; outside forty *li* were administered by the two capital counties. The magistrate asked the emperor to follow this ancient system so that the jurisdiction was clear and shuffling would be less (NGDK, 006196; MQDA, A022-043). The magistrate's memorial clearly shows that where the two capital counties administered was outside Jingshi.

the court made it very clear that where Shuntian Prefecture administered was outside of Jingshi:

The places of the Eastern, Western, Southern, and Northern Wards of Jingshi, and the places of Daxing, Wanping as well as other outer²⁰ counties and departments, are interlocking and confused. The reason lies in the fact that some *chengshu* areas are not administered by the capital [military] battalions (*ying*营) or posts (*xun*汛), and some places of the counties or departments are not administrated by the outer battalions or posts either. From now on, the division will follow the past system of the capital battalions: the *chengshu* areas beyond the capital battalions' boundary will be administered by Daxing and Wanping counties; the places of Daxing and Wanping counties inside the capital battalions' boundary will belong to four wards" (GXHDSL, vol. 1090: 916).

The capital battalions here refer to the Commander-general of Metropolitan Infantry Brigade's Green Standard army and the outer ones refer to the army in Shuntian Prefecture. The battalions and post were military stations, but they were more like police stations. The above shows that Jingshi's *chengshu* was under the same administration as the urban area. It clearly shows that Jingshi was the place administered by the Five Wards as well as the Commander-general of Metropolitan Infantry Brigade. As Han Guanghui states, the decision of 1734 finalized Jingshi's boundary. Also thanks to Han who rectified the mistakes in the *Guangxu Gazetteer of Shuntian Prefecture* (*Guangxu shuntianfu zhi* 光绪顺天府志) and figured out the boundary line of Jingshi's *chengshu* (Han, 1999: 154-5), we can see a clear structure of Jingshi (Map 1.1.). The *chengshu* was basically rural, but lots of imperial gardens were located there.

II. The Resident

Zhaolian (昭璉), who was Prince Li (*li qingwang* 礼亲王) during the reign of the Jiaqing emperor (1796-1820), tells a story in *Xiaoting zalu* (啸亭杂录 Random Notes from

²⁰ Outer, or *wai* 外, means the place outside Jingshi. All departments, counties mentioned here belonged to Shuntian Prefecture.

the Whistling Pavilion). Alima, a valiant Manchu general who committed many crimes during the early Qing, was sentenced to death. When the prisoner-cart reached the Xuanwu Gate, Alima laughed and said, “[I]f I am destined to die, I have to die. However, I am a Manchu. Do not let the Han see my death. Kill me inside this gate.” His request was granted and he was executed inside the Xuanwu Gate (Zhaolian, 1980: 234-35).

The Xuanwu Gate was one of the Three Front Gates that connected the Inner City and the Outer City. According to the Qing system, criminals who received the death sentence were usually imprisoned in the Inner City while the execution took place in the Outer City. The Xuanwu Gate was the gate through which the condemned passed on their way to their execution. Alima did not want to pass through the Xuanwu Gate because the Outer City was where Han resided. True or not, the story of Alima reflects one of the most important Qing policies: segregation. The Inner City was the place in which Manchus resided, while the Outer City was where Han resided.

The segregation policy was the biggest discontinuity in Jingshi between Qing and Ming. After the Manchus took Jingshi in 1644, a large number of banner men entered the Inner City. This segregation policy occurred in 1644. An edict issued on November 11 shows that the Qing court already forced residents in the Eastern, Middle, and Western wards to move out. The Qing ruling house stated that “[I]n the capital city (Jingdu 京都), soldiers and civilians should live separately according to their wards” because this is a convenient solution for both Manchu and Han (QSL, SZ, vol. 9: 95; MQDA, A2-12). The Qing court was smart to use the term soldiers and civilians rather than Manchus and Han. But it is obvious that the Qing court was determined to impose segregation on Jingshi. Considering the fact that Qing armies had just entered China proper, this segregation

policy was not implemented well. In 1646, the Qing court argued that because Han lived together with the Manchus, it was difficult for censors of the Five Wards and the patrolling and arresting battalions (*xunbu ying* 巡捕营) to inspect. Therefore, the Qing court ordered Han officials and commoners to move to the Southern (Outer) City using the excuse of eliminating Manchu-Han conflicts (QSL, SZ, vol. 24: 204). Still, the policy was not implemented so well. Two years later, in 1648, the Qing court must re-issue another edict:

The Han officials and commoners in the capital city originally lived together with Manchus. Recently, WE hear that conflicts, such as killing and robbery, are happening everyday and Manchus *and* Han blame each other. Conflicts will be endless. If matters continue when can there be peace? This is really due to the fact that Manchus and Han are living together. WE have thought it over and over. Though transferring (Han to the Outer City) will take a lot of work in the present, Manchus and Han will respectively be peaceful and not disturb each other, such that transferring would be permanently convenient. Except the *touchong*²¹ Han people in the Eight Banners, all other Han officials, merchants, and commoners have to move to the Southern [Outer] City... As for clerks and runners in the Six Boards, Censorate, the Imperial Academy (*hanlin yuan*, 翰林院), Shuntian Prefecture, and other big or small yamens, those who work as storehouse watchers and live inside the yamen do not have to move; all those who live outside of the yamen have to move. Monks and Taoists who live in temples do not have to move; all those who live outside the temple have to move” (QSL, SZ, vol. 40. 319).

This segregation policy forced Han, with a few exceptions, to move to the Outer City. Due to the segregation policy, the Inner City came to be the Tartar City or Manchu City where bannermen resided; the Outer City was also called Chinese City in which civilians resided. The residents in *chengshu* were mostly civilians, but some Manchu nobles and other bannermen lived in various gardens owned by the emperor or Manchu aristocrats.

From the perspective of legal status, Jingshi’s residents largely had two categories:

²¹ *Touchong* is the process in which Han, voluntarily or not, offered or sold themselves, their wives and children, or the whole family to bannermen.

bannermen and civilians. Inside the Inner City were mainly bannermen with a few civilians. Being the capital of the Qing, Jingshi also accommodated several other smaller categories of people, such as eunuchs. Some bannermen also lived outside of the Inner City. Outside of the Inner City were mainly civilians. The majority was Han. The Outer City concentrated most business because bannermen were generally prohibited from pursuing a career as merchants.

We should be alert that this segregation policy was not implemented thoroughly from the very start. *Touchong* bannermen—they were basically ethnically Han but legally bannermen, could reside in either the Inner City or the Outer City. As time went on, some bannermen moved into the Outer City and *chengshu*, while some civilians moved into the Inner City. Many slaves under the banner system escaped, and they lived together with civilians. As early as 1654, a civilian rented a room at the Inner City (NGTB, 2088-12; 2089-2). In 1665, the Qing court permitted *touchong* Han people under the banner system to live in the Outer City and ordered bannermen who lived outside the Inner City to move into the Inner City (KXHD, vol. 81: 4067). Such an order reflects that some regular bannermen had resided outside the Inner City. In 1683, the Qing court permitted any Hanjun banner officials, regardless of they were retired or on service, to live in the Outer City, as were retired Manchu and Mongol banner officials (KXHD, vol. 81: 4067).

Even though all bannermen were registered under the banner system, they were far from homogenous. On the contrary, bannermen had various sub-categories and hierarchies. First, the Eight Banners had different statuses. The Upper Three Banners controlled by the emperor himself, including Bordered Yellow, Plain Yellow, and Plain White Banners, enjoyed a higher status than the Lower Five Banners. Second, each banner had three

sections: Manchu, Mongol, and Hanjun (Chinese). The Eight Banners actually became twenty-four banners in the mid-Qing. These three sections enjoyed different privileges, while Manchu had the most, Hanjun enjoyed the least. Third, bannermen could be divided into “regular bannermen” or *zhengshen qiren* and other low status bannermen, such as slaves and overseers under the banner system. The bondservants were literally the banner lords’ “slaves” or servants. The bondservants of the Upper Three Banners belonged to the emperor; others belonged to banner lords. Many bondservants as a group enjoyed the status similar with other regular bannermen, though a master-slave relationship always existed between bondservants and their masters. Lastly, in terms of hierarchy, imperial lineage was at the top of the whole Qing society including the banners; other banner nobles and officials were next; the regular bannermen were the main body of the banner system and they enjoyed privileges that civilians did not have; slaves and other low status bannermen were at the bottom. (Elliott, 2001: 39-88)

Table 2.1. Jingshi’s Population during the Qing (Han, 1996: 128)

	1647	1657	1681	1711	1781	1882
Inner City	395,000	411,700	453,300	566,600	541,100	479,400
Outer City	144,000	150,460	187,900	200,100	235,142	296,711
<i>Chengshu</i>	120,000	121,900	125,700	151,200	210,736	309,044
Total	659,000	684,000	766,900	924,800	986,978	1,085,155

Just like the physical structure, the population registration of Jingshi also had three sections: the Inner City, the Outer City, and the *chengshu*. The total population reached nearly a million during the mid-Qing (See Table 2.1.). The population in the Inner City did not grow as fast as those in the Outer City and *Chengshu* areas. Largely speaking, residents in the Inner City were bannermen, and they were more than half of the total

population in Jingshi before the nineteenth century.

III. Institutions

There was no single city government in Qing Jingshi. On the contrary, as the capital of the Qing, Jingshi was administered by various institutions. These institutions were directly responsible to the emperor. Therefore, Jingshi was directly under the imperial rule even if the day-to-day administration was divided among several institutions. The relations among these institutions were so complicated that even specialists in Qing history might be confused. Two sentences from contemporary scholars describe the three main local institutions of Jingshi:

Though [the Qing court established] Shuntian Prefecture, Daxing and Wanping counties in Jingshi, the place [of Jingshi] comes under the Five Wards,” said Wu Changyuan (1983: 20).

[The Inner City] is divided into Five Wards according to the established system, but it is actually governed by the Commander-general of Metropolitan Infantry Brigade, said Zhu Yixin (1982: 51).

These two sentences by two contemporary scholars supported by Qing official records (QLHD, vol. 85: 14; QCTD, 2000: 2205) reveal the complicated relationships among three key institutions of Jingshi. Though there were one capital prefecture and two capital counties, Jingshi was actually administrated by the Five Wards; though in the Inner City there were Five Wards, it was actually ruled by the Commander-general of Metropolitan Infantry Brigade. These two sentences show that Qing Jingshi was the place concurrently administered by the Five Wards and the Commander-general of Metropolitan Infantry Brigade. The jurisdiction of Shuntian Prefecture and its two subordinate capital counties was mainly out of Jingshi.

a. Shuntian Prefecture, Daxing County, and Wanping County

Shuntian prefecture and its two subordinate counties, Daxing and Wanping,

nominally administrated Jingshi. All three yamens located in the Inner City. The two counties were capital counties (*jingxian* 京县), and the prefecture was the capital prefecture (*jingfu* 京府). The Shuntian prefect (*fuyin* 府尹) ranked 3a, enjoying a higher status than other ordinary prefects (*zhifu* 知府).²² The prefect was directly responsible to the emperor while other ordinary prefects were under the administration of their provincial governments. The two county magistrates ranked 6a, and also held a higher status than other county magistrates, who ranked 7a. The officials of these yamens were usually Han.

Nominally, Daxing county administered eastern Jingshi, and Wanping county administered the west part (DXXZ, vol. 1, 10b). Their theoretical boundary line was the north-south central axis line of the Inner City which went through Tiananmen. Therefore, in addition to be the imperial capital, Jingshi was also a prefectural seat and a county seat. The Shuntian Prefect was considered a capital official (*jingguan* 京官) under the direct imperial rule. But its subordinate counties, departments, and sub-prefectures were also under the administration of Zhili Province even though Daxing and Wanping counties' yamens were in the Inner City of Jingshi.

As Fuge tells in *Tingyu congtan* (听雨丛谈 Talks Collected While listening to the Rain), outer officials (*waiguan* 外官) from outside of Jingshi could go through Jingshi's city gates only by cart/chariots (*che* 车), but the Zhili governor-general could ride in a sedan chair because the Daxing and Wanping county magistrates were also his subordinates (Fuge, 2000: 2977). The ritual symbolically shows that the city of Jingshi was also the Daxing and Wanping's county seat. The two counties concurrently belonged

²² Fengtian Prefecture in Shengjing enjoyed similar status as Shuntian Prefecture in Jingshi.

to Shuntian Prefecture and Zhili Province, but Zhili Governor-general was an outer official while Shuntian Prefect was a capital official, and the Shuntian prefect was directly responsible to the emperor rather than to the Zhili governor-general.

In practice, however, the two counties were mainly under Zhili Province, not Shuntian Prefecture. As far as Jingshi was concerned, both the two capital counties and the capital prefecture had very limited power in every section of Jingshi including the Inner City, Outer City and the *chengshu*. Qing sources clearly show that the two counties' areas were out of Jingshi (Map 1.1.). As capital prefecture and capital counties, they did participate in the administration of Jingshi, but their administrative role in Jingshi was mostly symbolic.

The situation whereby the capital prefecture and capital counties had very limited role in the administration of the capital dated before the Qing. This situation is the outcome of China's long history. The Qing followed the Ming's political system in which Shuntian Prefecture and its two capital counties already played a very limited role in the administration of Jingshi.

b. Five Wards

The Qing followed the Ming political system and set up Five Wards in Jingshi. But the Qing Five Wards had a different formula from the Ming. During the Ming, the Inner City was divided into Eastern, Western, Middle, and Northern Wards, while the Outer City was the Southern Ward. During the Qing, both the Outer and the Inner City consisted of Five Wards. That is to say, each ward has some places in both the Inner and the Outer cities. Except the Middle Ward whose territory was all inside the city walls, all other four wards also had some *chengshu* area. In other words, these four wards had territories in all

the three sections of Jingshi. Each ward had its own administration called Constabulary (*bingmasi* 兵馬司). The Constabulary of the Five Wards was supposed to be the real local governments of Jingshi. But actually, all these Five Wards was controlled by two or three censors. Among these censors there were at least one bannerman and one civilian. The officials of the Constabulary actually became the subordinate of the censors. The officies of the Five Wards were in the Outer City and the *chengshu*, but all these censors' yamens were in the Inner City. Censors were subordinates of the Censorate, but they could directly memorialize to the emperor. They were, like the Shuntian prefect, actually responsible to the emperor.

As mentioned above, the residents of the Inner City were mainly bannermen. Therefore, the Inner City, though nominally under control of the Five Wards, was actually controlled by bannermen's own organizations. Among them the Commander-general of Metropolitan Infantry Brigade was the most important. The Five Wards' power focused on the Outer City and *chengshu*.

c. The Yamen of Commander-general of Metropolitan Infantry Brigade

The Yamen of Commander-general of Metropolitan Infantry Brigade was also located in the Inner City. It was the most important institution in governing Jingshi. It was basically a military organization and originally and mainly a bannerman's institution. In 1691, the Qing court also made the Commander-general of the Gendarmerie the head of the Green Standard's army in Jingshi. Its power covered many aspects of the city's administration. Its armies had two parts: bannermen's infantry brigade (*bunjun* 步军) and the Green Standard's "patrolling and arresting battlions." The yamen also controlled Jingshi's sixteen gates' guards. The infantry brigade was mainly responsible for the

security and police of the Inner City. The patrolling and arresting battalions were mainly responsible for the Outer City and the *chengshu*. Therefore, the whole Jingshi was actually under the administration of the Commander-general of Metropolitan Infantry Brigade.

To sum up, Jingshi was nominally ruled by the two capital counties and the capital prefecture, but none of these yamens was the actual government of Jingshi. Jingshi consisted of Five Wards, but each ward and its censors actually just administered the Outer City and *chengshu*. The Inner City was also nominally ruled by the Five Wards, but it was actually governed by the Commander-general of Metropolitan Infantry Brigade. The Commander-general of Metropolitan Infantry Brigade's power covered the whole Jingshi area. Furthermore, though the Five Wards usually were not responsible for what happened in the Inner City, the censors, as their title indicates, could impeach and supervise anyone including the emperor, so these censors' power could also reach the Inner City.

d. Institutions that administered bannermen

The majority population in the Inner City were bannermen who had their own organizations. The Eight Banners were the basic organizations for bannermen. It had three levels: Banner Commander (*dutong* 都统), Lieutenant Colonel (*canling* 参领), and Captain (*zuoling* 佐领). Each banner had one Banner Commander who was the highest official who took charge of the banner's issues (Elliott, 2001: 365). Captainship was the basic banner unit. For bannermen, the captain's role was usually described as the counterpart of a county magistrate for civilians (Fuge, 2000: 2970). These Eight Banners played a very important role in the very early period of the dynasty. Until the mid-Qing, however, not only did other banner lords except the emperor, but also the Eight Banners

lose their power with the emperors' centralization of power. As Qianlong Emperor said “[T]he workload of the Eight Banners (*qiwu* 旗务) can not compare with that of the six boards. Every Banner only has things like answering the appointment of officials. Other than that, they have few things to do” (QSL, QL, vol. 76: 203). The Eight Banners just did some regular management for the bannermen. The Inner City where bannermen resided was mainly governed by the Commander-general of Metropolitan Infantry Brigade.

In addition to the Eight Banner, there were two additional banner institutions. One was the Imperial Household Department, the other the Imperial Clan Court. The former was a creation of the Qing and the latter was inherited from the former Ming dynasty. The Imperial Household Department was responsible for the emperor's personal affairs. The bondservants of the Upper Three Banners who were the emperor's servants, the palace eunuchs, and palace maids were all under the administration of the Imperial Household Department. The Imperial Clan Court was the Number One yamen who took charge of affairs of the imperial lineage.

e. Others

The above institutions could be considered as “local” governments of Jingshi. All these *yamens*, including the nominal local governments Shuntian Prefecture and its two capital counties, more or less, played a role in the juridical system of Jingshi. Among them there were not any vertical relations. Jingshi also accomodated numerous institutions in addition to these. The first and foremost institution, of course, was the Emperorship. The emperor had multiple roles in Qing. He was a Manchu and the most powerful banner lord, the head of the bureaucracy, and the Son of Heaven. Besides the emperor, many other institutions, directly or indirectly, played a role in the administration of Jingshi. I will just

list some important institutions related to this study and briefly introduce their function in the juridical system in Jingshi.

The Board of Revenue was one of the six boards of the Qing central government. It took charge of the financial issues. The Board of Revenue adjudicated land and household cases involving bannermen. The Board of War was also one of the six boards which took charge of military issues. The Board was responsible for the despatch of those punished by military exile. The Board and its subordinate yamen, the Supervisory Yamen on Arrest (*dubu yamen* 督捕衙门), also adjudicated fugitive cases in the early Qing. The Three High Courts, which included the Board of Punishment, the Censorate, and the Great Court of Revision, were the core of the Qing bureaucratic legal and judicial system. Among them the Board of Punishment was the most important legal institution in Qing China.

II. The Inherited Juridical System of the Ming

During the Ming dynasty, Jingshi was under the Ming ruling house. The Ming court also applied the Ming code and other Ming laws in Jingshi. But because Ming Jingshi was under direct imperial rule, the judicial structure in Jingshi was different from that in the provinces where the judicial structure was based on the administrative structure. It was arranged from county to prefecture, to province, and finally to the central government in Jingshi.

In Jingshi, a sophisticated juridical system was in place. There were two rungs immediately below the emperor. On the lowest of these rungs were the Board of Punishment and the Censorate. These two parallel yamens, also called the Two High

Courts of Judicature (*erfasi* 二法司) in the Ming dynasty, were the primary judicial institutions in Jingshi. The Board of Punishment focused on cases involving commoners and the Censorate on cases involving officials. But the line between the two branches was permeable. The Board of Punishment could adjudicate officials' cases, and the Censorate commoners' cases. (Na, 2002)

Neither the Board of Punishment nor the Censorate could make a final judgment, however. Upon recommending a punishment, these yamens sent their cases up to the next rung, occupied by the Grand Court of Revision for review. Only after the emperor endorsed the Grand Court's judgment was the case concluded and the punishment implemented. The emperor reserved the power to veto or to revise any proposed sentence. The emperor sometimes shortened the three-step procedure by ordering the Three High Courts (The Board of Punishment, Censorate, and the Grand Court) to co-adjudicate cases originating in Jingshi, but this practice was never systematized in the Ming dynasty (Na, 2002). Besides the Three High Courts, other institutions also participated in juridical work. For example, in cases involving imperial clansmen, the emperor might order the Three High Courts and the Imperial Clan Court to co-adjudicate (Na, 2002: 354-8). The Board of Revenue, moreover, might adjudicate some land cases originating within Jingshi. (Na, 2002)

Both the two High Courts could try cases and make recommended sentences, but they could not accept complaints. Residents mainly sent complaints to the chief of Constabulary (*bingmasi zhihui* 兵马司指挥), censors of the Five Wards, or the Office of Transmission (*tongzheng si* 通政使司). Police institutions also frequently sent cases (either with or without crimes) to the Two High Courts. Being the capital of the Ming,

there was a much larger police force in Jingshi than other cities. Besides the runners of the Five Wards, the Ming also set up patrolling and arresting battalions in Jingshi. These armed men of the battalions actually worked as policemen and were under the control of the Board of War. There were also two notorious intelligence security apparatuses, the Dongchang (eastern depot 东厂) and the Jinyi Wei (锦衣卫 the embroidered-uniform guard). These police forces institutionally must send cases to the Board of Punishment or the Censorate. (Na, 2002)

The Three High Courts were the backbone of the juridical system during the Ming dynasty. However, their power was not only restricted by the emperor, but also challenged by other institutions. These institutions were mainly the notorious intelligence security apparatuses like the Dongchang and the Jinyi Wei. After investigation, these intelligence institutions were supposed to send cases originating in Jingshi to the Board of Punishment or the Censorate without charging crimes or *nilü*.²³ But in practice they did charge crimes or even adjudicated cases. Their recommended judgments usually received no oppositions in the further re-trial and review. These intelligence agencies, like the Three High Courts, were under the control of the emperor. (Na, 2002)

The juridical system in Jingshi experienced changes throughout the Ming dynasty. For example, the censors of Five Wards were granted the power to accept complaints and adjudicate minor non-criminal cases, such as land disputes after 1586 (Na, 2002: 167-8). Furthermore, the power of the Board of Punishment increased while that of the Censorate

²³ The legal term *nilü* 拟律 or charging crimes refers to the mechanism that the jurists made decision on the nature of the crime and on the criminal's punishments based on both the code and what the criminal violated. In Ming-Qing China, the jurists must write down on the verdict the criminal's violation, the nature of the crime, the precise articles of the code that relate to the violation, and the recommended punishments.

and Grand Court of Revision decreased. The Board of Punishment not only assumed the authority of its parallel yamen – the Censorate – but also that of the Grand Court of Revision (Na, 2002: 446-54). For example, after 1500, some cases were adjudicated by the Board and approved by the emperor without the review by the Grand Court (Na, 2002: 276).

The juridical system of Jingshi was constructed in such a way as to extend the emperor's reach over the bureaucracy. The centralization of the emperor's power reached a summit in the Ming dynasty. The emperor delicately set up a parallel between the Two High Courts. Meanwhile, the notorious intelligence institutions worked as the “claws and teeth” of the emperor. With hindsight, the Ming system created as many problems as it solved. It burdened the emperor with an insurmountable workload. Any judgment for any case with crimes originating in Ming Jingshi, regardless of its possible punishment, must be endorsed by the emperor before implementation. The Ming court did not change this system despite some officials suggested that the Board of Punishment be granted the power to conclude minor cases punishable by the light or heavy bamboo. As Na Silu states, the emperor was not willing to give up his highest judicial power (Na, 2002: 272-4). One result was the Ming emperor's heavy reliance on eunuchs and chief ministers, often to the detriment of court interests. The eunuchs' control over the notorious intelligence institution – the Eastern Depot tarnished the reputation of the Ming juridical system. A statement is widely known that “the Ming shared all under Heaven with chief ministers and eunuchs.” In Jingshi, the regular juridical system was heavily jeopardized by the eunuch, or more precisely, by the emperor himself.

III. The Manchu Juridical System

Before 1644, the Qing developed a juridical system that was influenced by the Ming but distinguishable from the Ming system. The juridical system was constructed by pre-conquest Khans, first Nurhaci and then Hong Taiji--in no small part to rein in the power of contending Manchu nobles. Scholars describe the Qing juridical system before 1631 a “joint adjudicative system involving different levels of the nobility and officialdom” (*duo ceng hui shen zhi* 多层会审制). In that system, a case experienced various levels, and in each level, various banner nobles rather than professional jurists jointly adjudicated cases. The trial system was heavily influenced by individual banner nobles. Nurhaci held the highest judicial authority when he ruled as Khan. After he died, however, Hong Taiji must share this power with three other *beile* 贝勒.²⁴ Obviously, this system not only weakened the Khan’s power, but also affected legal justice because every banner noble usually tended to speak for his own subordinates. (Liu, 2007: 299)

In 1631, the Latter Jin set up six boards (QSL, TC, vol. 9: 124). Their establishment was a major step toward copying the Ming system as well as centralizing Hong Taiji’s power. Shortly after the foundation of the Board of Punishment, Hong Taiji ordered minor cases adjudicated by the company captain (*niu-lu ezhen* 牛录额真) and major cases sent to the Board of Punishment. The demarcation of minor and major cases was mainly based on Manchu custom. The edict lists a series of offenses typical to the Manchu way of life: if a dog kills livestock by biting, the family of the dog will be given

²⁴ After Nurhaci died, Hong Taiji became the nominal khan, but he was actually just one the four *beiles*.

the meat of the livestock and be ordered to compensate for the price of the livestock. If two persons engage in an affray or come to blows, the person in the wrong or acting inappropriately will be punished in accordance with precedent. The person who damages other's clothing will be required to compensate for it... It finally concludes: "All the above offenses should be adjudicated by the company captain immediately. If offenses are more severe than these, send them to the Board [of Punishment] to adjudicate" (QSL, TC, vol. 9: 126).

This edict indicates that the Latter Jin and Qing juridical system had two levels. One was the company captain, the other the Board of Punishment. The company captain could settle minor cases. The Board of Punishment adjudicated severe cases, but its judgments must be approved by the emperor. This two-level system was maintained until 1653 and the backbone was preserved till the New Policy period (1901-1911) in Qing Jingshi. According to historian Na Silu, bannermen usually sued at the Board of Punishment, and they seldom brought complaints directly to officials of the Eight Banners (Na, 1992: 49). This practice facilitated the emperor's usurpation of the banner lords' power in the judiciary field. It is also worth noting that this two-level system did not completely substitute for the original joint adjudication system.²⁵

The establishment of the Qing Board of Punishment in 1631 was a major but not the last step to the adaptation of the Ming system and the centralization of imperial authority over the judicial system. In 1636, the Qing court set up the Censorate (Zhao, 2007: 87). Unlike the Ming dynasty, however, before 1644 the Qing court did not

²⁵ During the whole Qing dynasty, sensitive or important cases could still be adjudicated by officials from various levels. I personally believe that both the Ming system and the this joint adjudication system formed in the Latter Jin contributed to the joint adjudication of sensitive or important cases after 1644.

implement the system of co-adjudication of the Three High Courts, and the Board of Punishment's power was particularly weighty (Na, 1992: 29).

In addition to the two-level institutions of the Board of Punishment and the captaincy, other banner institutions also played role in the juridical system. One was the banner commander (*gushan ezhen* 固山额真). After 1631, banner commanders lost their power to serve as one former juridical level above the company captains, cases were adjudicated by either the captaincy or the Board of Punishment. But they could still patrol and adjudicate cases in their own banners (Zhang and Guo, 1988: 567). Banner lords also played an important role in the juridical system. Each of the six boards, including the Board of Punishment, was under control of a banner lord, and banner lords still participated in the adjudication of important cases before 1644 (Liu, 2007: 256-258).

What law did jurists apply in adjudication? Both Na Silu and Liu Xiaomeng state, though Hong Taiji explicitly ordered the usage of the *Da Ming huidian* (大明会典 Collected statutes of the Great Ming dynasty) in adjudication, in practice Manchu customs either played a more important role (Na, 1992: 58) or at least were still partly preserved (Liu, 2007: 307-8). In this dissertation, I use the term Manchu law to describe these customs and written laws practiced in the pre-1644 Qing dynasty. The above 1631 edict also shows that the demarcation of cases in Qing juridical system was mainly based on Manchu customs. The *Qingshi gao* (The draft History of the Qing Dynasty 清史稿) and some scholars argue that the Latter Jin copied Manchu customary law into the *Shengjing dingli* 盛京定例 (Established Precedents of Shengjing) in the seventh year of the Tiancong reign (1633) (QSG, vol. 142: 4182; Yan, 1989: 93), but Liu Jinghui 刘景辉

argues that *Shengjing dingli* did not exist in 1633 because the name of Shengjing was not given until the eighth year of the Tiancong reign (1634). In practice, however, the *Shengjing dingli* was cited after 1644. He further explains that the *Shengjing dingli* was not a completed written law but a term that describes the precedents established after the Qing gave its capital the name of Shengjing (Liu, 1969: 48-51). Shimada Masao (1992: 464-5) also accepts Liu Jinghui's argument.

By following Manchu law, the Manchu penal system before 1644 was full of Manchu characteristics. Previous scholars (Zhang and Guo, 1988: 528-548) categorized punishments into five groups: capital punishment, corporal punishment, punishment against freedom, property punishment, and deprivation of offices and titles. The death penalties mainly referred to decapitation, and other variations were not so frequently applied but existed, such as burning to death (*shaosha* 烧杀). Corporal Punishment mainly included whipping and perforating the ear and the nose with arrows (*guan erbi* 贯耳鼻). The former was the main corporal penalty and the latter that would give criminals life-long marks on their bodies was used on criminals such as thieves. The punishment against freedom usually referred to imprisonment (*juanjin* 圈禁) in the "empty room" or the "room with high walls." This punishment was mainly applied to nobles and officials. Another punishment against freedom was exile, but it was seldom applied. Property punishment had two categories, confiscation and redemption. The target of confiscation could be anything including but not limited to retainers, slaves, servants, wives, children, livestock, silver, and so on. A free person could become a slave after he was confiscated. Nobles and officials could be fined *tuhere weile* (Chinese: *tuheile weile* 土黑勒威勒).

Tuhere weile literally means adjudicating crimes according to the precedents (*zhaoli ding de zui* 照例定的罪). These precedents impose fines or whipping on officials and nobles according to their ranks and titles. This term *tuhere weile* was widely used and the relevant precedents were well known to judges. Redemption allowed nobles and officials to pay a fine instead of receiving other punishments. The last group of punishment is deprivation of office or inherited titles. Officials and nobles could be deprived of their titles or positions if they committed offenses.

Hence, the Manchu juridical system was influenced by but very different from the Ming system. Both Manchu law and Manchu penal system were distinguished from the Ming counterparts. The Qing dynasty had not developed a mature bureaucratic system. Compared with the Ming system, the Manchu system was still very “primitive.”

The fugitive law and fugitive cases were a typical example to describe the characteristics of the Manchu juridical system. The fugitive law emerged in order to punish any fugitives (slaves and regular bannermen) and anyone who helped or harbored fugitives. As early as in 1623, the Latter Jin defined the crime of escape and specified that those who harbored fugitives committed the crime of stealing persons. In 1632, Hong Taiji stated that anyone who accommodated fugitives would be punished according to the penalty for the crime of covering fugitives (Zhang and Guo, 1988: 513).

Only a few records can tell part of the story of the fugitive law. As far as I know, the Latter Jin established the earliest regulation in 1626. That original regulation states that “[E]very fugitive who has left his or her home shall be executed if [he or she] is caught.” In the same year, the court revised this regulation and the new regulation states that “[F]ugitives who have committed the crime of escape four times shall be executed”

(KXHD, vol. 107, 5312). In other words, a bannerman would be executed if he or she escaped four times.

We can deduce the fugitive law from some fugitive cases.²⁶ The pre-1644 records show that the court applied the fugitive law to both the regular bannermen and their slaves. For example, in 1638, a bannerman harbored two other bannermen for four years. The jurists sentenced the two fugitives and the harborer to death. The jurists also sentenced the harborer's company captain to one stroke of the whip and deprivation of his post. The emperor Hong Taiji ordered these two bannermen freed without punishments. He exempted the harborer from the death penalty and punished him by eighty-two whips plus perforating the ear with arrows and a fine of nine taels. He did not change the suggested punishment for the company captain (SJXB, 28). The emperor pardoned the two bannermen probably because they were regular bannermen, not slaves. Other fugitive cases (QCGSY, vol. 1: 343, 351-3) in which regular bannermen escaped show similar mechanism. If the emperor's final judgements had not been counted, the punishments for the fugitives (regular bannermen) were either death or hamstringing with whipping, but the emperor usually exempted the death penalty.

The punishments for the escaped slaves were also either death or hamstringing with whipping, but the monarch usually did not reduce the fugitive's punishment. For example, an ethnic Korean slave fled to Choson when his master took him to go hunting. The Choson King sent the Korean slave back in 1632. The Khan Hong Taiji said “[He] does not know the law, so he fled. He is a poor person. Hamstring him. Give him to his

²⁶ The *Shengjing manwen taoren dang* (盛京满文逃人档 Shengjing Manchu Text Archives of Fugitives) recorded 148 fugitive cases from 1626 to 1630, but the archives tell little about the fugitive law or the punishment that any fugitive received (SJMWR, 1-21).

original master” (MWLD, 1193). Also in 1638, a Han man and a Korean woman escaped, but they were caught at the Manchuria border. The two fugitives belonged to a bannerman and they did not have independent status. The man received death penalty and the woman hamstringing plus fifty lashes of the whip (QCGSY, vol. 1: 336-7).

From the jurists' adjudication and the Hong Taiji's final judgments in these cases, it can be concluded that first, the fugitive law itself ruled both slaves and regular bannermen. Second, hamstringing, whipping, and death penalty were all possible punishments for fugitives and the harborers. Third, the emperor or the khan often revised the jurists' recommended sentences. Fourth, the emperor or the khan usually exempted regular bannermen from death punishment. In other words, the bureaucracy actually adjudicated fugitive cases pretty coherently while the monarch often changed the bureaucracy's sentences. As previous scholars (e.g. Zhou and Zhao, 1986: 323) have pointed out, the fugitive law before 1644 was not stable and the sentencing was changeable in accordance with the emperor or the khan's personal minds.

In sum, the Qing court created a juridical system from both the Ming system and the Manchu customs, but as a whole, its Manchu characteristics were obvious. The Qing emperor selectively adopted the Ming system. The Qing emperor sought out elements of Ming law that might assist in weakening the Manchu nobility and assuring greater control to the throne. Elements of the Manchu customs that did not get in the way of this project were kept. Actually, in terms of centralization of power, the Ming and the Qing emperors had similar intentions, but Manchu emperors had a different way to safeguard their power. When the Qing army took Jingshi, the ruler must face the conflict between the Ming and Manchu juridical systems.

Chapter 3 The Juridical Procedure of Jingshi during the Shunzhi reign

This chapter analyzes the change of the juridical procedure in Jingshi during the Shunzhi reign, a history that previous scholars have not explored. Drawing upon Qing official records, especially the archives preserved both in Beijing and in Taipei, I will reconstruct the unrevealed story. This chapter will first discuss the change of the police system. Then, it will describe the change of the juridical procedure beginning with the two-level juridical system. Lastly, it will discuss the change of the adjudicative procedure of capital cases.

The juridical system in Jingshi consisted of two levels. One was the preliminary courts like the Five Wards, the captainship under the Banner system (the Eight Banners), or the Board of War, the other the Board of Punishment. Both the Ming and the Manchu (or the pre-1644) juridical systems influenced the juridical procedure in Jingshi. The Ming juridical principles had already impacted on the Manchu juridical system before 1644. After 1644, the Qing court continued adopting the Ming systems, and the juridical system in Jingshi during the Shunzhi reign was more like the internal development of the Ming system.

I. Segregation? The Juridical Procedure in Jingshi

On June 6, 1644, Manchu armies entered Jingshi without any resistance and declared the Qing rule over China. Jingshi residents had little choice but to accept the

strange, even “barbaric,” Manchus as their new rulers. To the Manchu ruler, pacifying Jingshi was the top priority. Reconstructing the juridical system was key to restore order. Generally speaking, the Prince Regent Dorgon simultaneously continued the Ming juridical system in Jingshi for the Han while installing elements of the Manchu system to cover banner households. The Manchu juridical system continued to be influenced by that of the Ming, and the Qing court also imposed some Manchu juridical principles on the Han people. After Shunzhi actually took the power in 1652, he made major reforms of the juridical system. These reforms, or the Shunzhi Restoration, created a unified system for both bannermen and civilians. Eventually, the Manchu and the Ming judicial systems integrated and unified into the new Qing juridical system that inherited mainly from the Ming.

A. Continuing and Revising the Ming Police System

In imperial China, especially at the local level, there was no separation between police and juridical institutions. Not surprisingly, even in Ming Jingshi, institutions like the Jinyi Wei also participated in adjudications and worked as police agency. In both Ming and Qing China, police institutions including the Five Wards received complaints and caught suspects. During the Qing dynasty, police institutions were even granted the power to conclude minor cases. In order to understand the juridical system, we must understand the police system first.

Policing and pacifying Jingshi was one of the most immediate tasks for the new Qing ruler. On August 28, 1644 Feng Quan and Hong Chengchou, the two grand secretaries who had once served the Ming, proposed a plan to strengthen the police force

in Jingshi. This plan was more like a reconstruction of the Ming system. The three major police institutions, the Board of War, the Jinyi Wei, and the Five Wards continued to police Jingshi. The Eastern and Western Patrolling and Arresting Battalions under the Board of War changed to the Northern and Southern Patrolling and Arresting Battalions.²⁷ Feng Quan and Hong Chengchou suggested some arrangements in regard to their jurisdiction, salary, and numbers of runners and soldiers of each institution. The Prince Regent endorsed their plan and ordered officials to implement it immediately (NGDK, 059954). Thus, the Qing court basically preserved the Ming police system in Jingshi.

The Jinyi Wei deprived of police function

Obviously, continuing the Ming police system was a temporary tactic. The Qing court abolished the notorious Eastern Depot but preserved the Jinyi Wei in 1644 probably because the Jinyi Wei was a military institution and it played an important role in policing Jingshi. However, the Qing court restricted the Jinyi Wei's juridical power in 1644 and deprived of its function as a police institution in 1646. This was one step to get rid of Ming abuses.

The restriction of the Jinyi Wei juridical power could be demonstrated by several cases in 1644. For example, in one case, Wang Shouren 王守仁 and several other commoners stole silver from a state warehouse during the turmoil when Qing forces just entered Beijing. Several soldiers (who were actual detectives) of the Jinyi Wei found the story. These soldiers reported the case to their superior and finally, the report went to Wang Pengchong, the Commander (*Du zhihui tongzhi* 都指挥同知) who took charge of

²⁷ The Qing court did make some revisions about the two battalions but retained the basic structure.

the Jinyi Wei. Wang Pengchong ordered that only suspects could be arrested. The criminals were arrested and their confessions were recorded. Wang Pengchong then memorialized the case to the Prince Regent Dorgon without charging crimes. Wang Pengchong asked the Prince Regent how the criminals should be punished and which yamen should confiscate the stolen silver. The Prince Regent gracefully pardoned the criminals, because the robbery occurred under the rule of the rebel bandit Li Zicheng, though he had the Board of Revenue take the silver. (NGDK, 007367; MQDA, A001-006)

Even though the Jinyi Wei still worked as a regular police and judicial institution, its power was restricted. The Jinyi Wei did not charge crimes, nor did it send the case to the Board of Punishment either. It was a safe way for Wang Pengchong to send any case to the Manchu ruler. The memorial shows Wang Pengchong was very scrupulous to any possibility that he or his subordinates could have other innocent persons abused. One example is that in this case, one criminal sent some silver to his father to hide. When the runners went to escort the criminal to his father's place, the father did not confess. Wang Pengchong stated that he did not dare to arrest and torture the father without the Prince Regent's edict.

Another case also show the Jinyi Wei served as a police institution without trial power. On January 8, 1645, Wang Pengchong memorialized a case to the Prince Regent. In this case, the Jinyi Wei caught several thieves who had stolen some copper tiles from the Forbidden City and Wang Pengchong asked the Prince Regent to have the Board of Punishment adjudicate the case. The Prince Regent ordered the Board of Punishment to adjudicate this case in accordance with the [Ming] code (NGDK, 185037).

The above two cases happened in the first year of the Shunzhi reign, but the Jinyi Wei adjudicated neither of them. The Jinyi Wei did enjoy the some judicial power as it had enjoyed in the Ming dynasty. The Qing court also gradually deprived of the Jinyi Wei's juridical and police power and restored its original function – as imperial escorts and imperial ceremonial retinues.²⁸

A case in December 1644 can verify that the Jinyi Wei was not a legal institution any more but just the emperor's escort. In this case, an official Tang Yuhua 唐虞化 made mistakes to carry a ritual on December 22, 1644. According to Wang Pengchong, Tang made mistakes because the Jinyi Wei was not informed in advance. When Wang Pengchong was writing the memorial to explain the mistake, the Board of Punishment summoned Tang Yuhua to the Board. Wang Pengchong memorialized the case to the Prince Regent on December 24, 1644, and the imperial prescript says “there was already an edict for Tang Yuhua. Let the Board (of Punishment) know [this memorial]” (NGDK, 038938; MQDA, A002-066). The imperial rescript clearly indicates that the Tang Yuhua case was adjudicated by the Board of Punishment, not the Jinyi Wei itself. Here the Jinyi Wei just served as the ceremonial retinues.

According to the Kangxi *Daqing huidian*, the Jinyi Wei was set up in the first year of the Shunzhi reign. In the second year of the Shunzhi reign, the Qing court changed the name of the Jinyi Wei to the Luanyi Wei 銮仪卫 (Imperial Procession Guard). As the Kangxi *Daqing huidian* states, the Luanyi Wei mainly worked for imperial rituals as the imperial escorts and had no juridical or police responsibility (KXHD, vol. 162: 7791,

²⁸ This was a function during the Ming dynasty. Of course, the Jinyi Wei was so powerful and notorious not because of its function as the emperor's escorts but because of its function as an intelligence agency.

7800-7810). In 1646, the Qing court decided to expel the Luanyi Wei's detectives (QCWXTK, vol. 195: 6599).²⁹ Thus, the Luanyi Wei lost its police function in 1646. As Zhaolian (1980: 176) states, "Luanyi Wei followed the system of Jinyi Wei in Ming, but it did not take on the responsibilities of arresting and investigating." Based on archives preserved in Beijing and Taipei, I could not find any case reported by Jinyi Wei after 1646.

In summary, the Qing court deprived the notorious Jinyi Wei of its police and juridical functions. The Jinyi Wei still preserved some functions as a police institution in 1644, but after it changed to Luanyi Wei in 1645 and the Qing court expelled its detectives in 1646, it lost its police functions. The deprivation of the Jinyi Wei as a police and juridical institution was an important step to get rid of the Ming abuses. The new Qing ruling house had studied the reasons for the decline of the Ming and tried to avoid the same errors. By doing so, the Qing ruling house could acquire legitimacy among the capital's population especially the Han officials who had faced the danger of the Jinyi Wei's abuses.

Segregation in the police system

After the Qing court deprived of the Jinyi Wei of its police and juridical functions, the patrolling and arresting battalions under the Board of War and the Five Wards were the main police forces in Jingshi, but their jurisdictions were limited to Han people. In the Inner City, where Manchus resided, infantry soldiers of the Eight Banners functioned as police. Such an arrangement could be verified by an edict issued on March 23, 1646. The

²⁹ According to a memorial submitted in the eighth year of the Shunzhi reign (1651), the runners (*fanyi* 番役) used by the patrolling and arresting battalions had all served in the Jinyi Wei or the Dongcheng in the end of the Ming dynasty (NGDK, 086953), showing that some Jinyi Wei's staff was transferred to other police institutions.

edict states that because some Han people resided among bannermen, it was difficult for the censors of the Five Wards and the officers of patrolling and arresting battlions to police them. The Qing court ordered Manchus and Han people to reside separately; meanwhile, the Qing court also ordered the patrolling and arresting battlions to patrol the places where Han resided and banner officers and soldiers to patrol where Manchus resided (QSL, SZ, vol. 24: 204). Clearly, the Qing court imposed a segregation policy in the police area. Manchus and Han were under different police institutions.

This arrangement of police forces was in accordance with the Qing segregation policy, but the arrangement was not static. On February 8, in 1654, the Qing court set up the Supervisory Yamen on Arrests under the Board of War (QSL, SZ, vol. 79: 627). The patrolling and arresting battalions were under the control of Supervisory Yamen on Arrests. In 1657, the Qing court set up the Middle Patrolling and Arresting Battalions (*xunbu zhongying* 巡捕中营) (GXHDSL, vol. 543: 18). Such changes, however, did not change the segregation policy. Manchus and Han were still under different police institutions.

B. Revising the Judicial System

As mentioned above, under the Ming system, even a minor case in Jingshi punishable by the heavy or light bamboo must be reviewed by the Grand Court of Revision and must be approved by the emperor. The Board of Punishment, as the center of law and punishment, even could not conclude a minor case in Jingshi. This system not only burdened the emperorship excessively but reduced the efficiency of the entire system, a problem discussed intensively by the Ming and Qing officials.

A Qing official record shows that the new dynasty continued the former Ming system. On August 18, 1644, Dorgon ordered that no persons should bring false charges to the court. He stated that in Jingshi complaints should be sent to the Office of Transmission and only after the Office of Transmission verified the complaint could the case be sent to the Board of Punishment; for censors of the Five Wards, if there were some cases that should be accepted and be sent to [the Board of Punishment] in accordance with the statutes, these cases should be sent as usual; in the provinces, minor cases should be concluded by the county or department magistrates and only major cases could be appealed to the inspector or governors (QSL, SZ, vol. 6: 68).

According to this edict, the juridical system was in accordance with the Ming system in both Jingshi and the provinces. As in the Ming dynasty, the Board of Punishment could not accept complaints. Other than that, this record tells us little about the judicial system in early Qing Jingshi. It neither mentioned whether censors of the Five Wards could adjudicate minor cases, nor whether the Board of Punishment must send cases to the Grand Court of Revision for further review. It did not mention cases involving bannermen either.

This section demonstrates that the Qing ruler, with the help of Han officials, created a new system that was not only a renovation of the Ming system but also a continuation of the Manchu system. The Qing dynasty followed the Manchu system for cases involving bannermen. The Banner system's captaincy could conclude minor cases³⁰ and must send major cases to the Board of Punishment. Cases involving both bannermen

³⁰ In this period, minor cases were not necessarily cases of bambooning, as defined by the Ming or Qing codes. The Han penal system of five punishments were not reinstated among civilians in Jingshi until 1653, and the full reinstatement among bannerment did not accomplish until 1656.

and civilians also must be adjudicated by the Board of Punishment. Meanwhile, the Qing court also revised the former Ming juridical system. Just like in the Ming dynasty, there were also two levels below the emperor in the juridical system in Jingshi in the Qing dynasty. In the Qing dynasty, the first level included the banner system's captaincy, the censors of the Five Wards, and the Board of War where minor cases could be concluded. The second level was the Board of Punishment that adjudicated major cases, though a great number of minor cases were also adjudicated here. This two-level juridical structure in Jingshi did not experience fundamental change until the New Policy period in the early 1900s.³¹

1. The First Level

In the first level, censors of the Five Wards, company captains and other institutions could also conclude minor cases. One salient change between the Qing and the Ming is that the Five Wards and the Board of War could conclude minor cases in Jingshi in the Qing dynasty. While in the Ming dynasty, the police and the judiciary institutions were separated, during the Qing dynasty, the two police institutions, the Five Wards and the Board of War were granted the power to adjudicate cases. As far as I know, no archives from the Shunzhi period from these yamens existed. My view that such institutions could conclude minor cases can be strongly supported by other Qing archives and records. I will take up these three institutions in sequence, the banner system, the Five Wards, and the Board of War.

³¹ There were some additional formats, however. For example, by following the Manchu tradition, some cases involving Manchus (e.g. QCGSY, vol. 3: 88-9) were adjudicated jointly by various princes, banner commanders, and the deliberative ministers (*yizheng dachen* 议政大臣). There were also some special procedures for capital cases.

The Banner system

The banner system or the Eight Banners could conclude minor cases. In 1654, when the Board of Punishment sent a memorial to the emperor to ask for more clerks as Han-Manchu translators, it mentioned its workload. “For Manchus of the Eight Banners, major and minor cases are dealt with by the eight households (*bafu* 八府)³²; Cases involving both Manchus and Han, cases of Manchu bandits, and major and minor cases in the Five Wards of the Inner City of the capital city (Jingcheng 京城) all are adjudicated by the Board [of Punishment]” (NGTB, SZ, 2133-19). This memorial clearly indicates that the banner system could also adjudicate some cases in which only bannermen were involved.

However, on March 7, 1655, a memorial delivered by Liu Shijie, who was a director (*langzhong* 郎中) of Henan Department (*Henan qinglisi* 河南清吏司) of the Board of Punishment, states that “now cases under the Manchu banners are all adjudicated by the Board of Punishment regardless of whether they are major or minor cases. Overseers and *tuochong* households do not comply with the local jurisdiction in the provinces. If they have disputes with civilians, these cases also belong to the Board of Punishment, regardless big or small. Those who are caught by Supervisory Yamen on Arrest are sent to the Board of Punishment. Cases that are adjudicated by the Five Wards and in which the culprits do not confess also are sometimes sent to the Board of Punishment. There is only one Board of Punishment, but big or small cases from Jingshi or the provinces, concluded or unconcluded, also converge here. Therefore, every day there are no less than tens of cases waiting for adjudication at the Board of Punishment.”

³² *Bafu* refers to the Eight Banners.

In order to alleviate the Board of Punishment's burden, Liu Shijie suggested that minor cases in Jingshi should be concluded by company captains, the Five Wards, or the Board of War; minor cases involving *tuochong* bannermen in the provinces should be adjudicated by local officials (NGDK, 085772).

The two memorials contradict each other in terms of the judicial power of the Eight Banners. Both memorials are descriptions by contemporary officials who worked at the Board of Punishment. However, the first one was a collective work and because it aimed to add more Manchu-Han translators, these officials had no reason not to mention the fact that the Board adjudicated all cases involving bannermen. The second one was submitted by Liu Shijie when the emperor requested all middle and high officials to express their opinions on the statecraft on February 24, 1655 when China was hit by natural disasters (QSL, SZ, vol. 88: 692). Liu sent the memorial in order to alleviate the workload of the Board of Punishment and he obviously exaggerated the Board's workload by arguing that it adjudicated any cases involving bannermen. The statement that the Board of Punishment adjudicated any cases involving bannermen and that cases caught by the Supervisory Yamen on Arrest were not correct since, as I will discuss in future, at least many fugitive cases were adjudicated by the Supervisory Yamen on Arrest.³³

Unfortunately, I did not find any archival cases concluded by the banner system during the Shunzhi reign. But, by examining some cases the banner system sent to the Board of Punishment, we can also conclude that the Banner system could adjudicate minor cases. Unfortunately again, the archival cases that indicate the banner system could conclude minor cases all concerned bondservants of the Upper Three Banners.

³³ Fugitive cases were definitely cases involving bannermen and many fugitives were caught by the Supervisory Yamen on Arrest.

Before further analyses, it is necessary to tell how a banner case was sent to the Board of Punishment during the Shunzhi reign. Bannermen's cases were sent to the Board of Punishment by the *booi da* (*baoyi da* 包衣大 officials of the fifth and sixth rank in Bondservant Companies), company captains, or individual bannermen. Following the pre-1644 tradition, company captains and individual bannermen sent cases directly to the Board of Punishment.³⁴ Very usually, bannermen from various backgrounds directly sent such kinds of cases involving fatalities to the Board of Punishment.

The *Booi da* was officials under company captains in bondservant companies. *Booi da* of the Upper Three Banners seldom sent cases directly to the Board of Punishment; on the contrary, they reported cases directly to the emperor. Then the emperor might order the banner officials to adjudicate these cases if they were minor cases and did not involve civilians or officials. If the case was severe or officials or civilians were involved, the emperor usually ordered the Board of Punishment to adjudicate. By examining the following three cases that the emperor forwarded to the Board of Punishment, we can deduce that the Banner system could conclude minor cases.

In 1653, a *booi da* Danmin 单敏 sent a case to the Board of Punishment through the emperor. Liu Keai, an artisan who made ornaments for horses' head (*wanjiang* 鍔匠) under Danmin, had remarried a widow. One day he quarreled with his wife and she fled to the home of her deceased husband's paternal uncle, a man name Song Er. According to the case, Song Er was a civilian under Wu Sangui. Liu Keai twice asked his wife to return,

³⁴ For example, in 1654, a bannerman Yi-su 一素 from the Plain Red Banner killed a civilian. After the case was reported to the company captain, the company captain said "send to the Board of Punishment" (NGDK, 087586). This case was directly reported to the company captain, but because it was a homicide case, so the company captain just sent it to the Board of Punishment.

but she refused. Song Er worked as a match maker and married Liu Keai's wife to Wang Xiaer 王小二, who was a bannerman under Li Zicheng company. Liu Keai heard of the marriage and reported it to his *booi da* Danmin. Danmin took the woman back. This case followed the prescribed procedures. *Because Song Er was a civilian* (my emphasis), Danmin suggested the Board of Punishment handle it. Danmin memorialized the incident to the emperor. The emperor replied "send it to the Board of Punishment." (NGTB, 1868-3)³⁵

In 1654, Wuerhu, a bondservant from the Bordered Yellow Banner, married his daughter to Muqingge who was a department director of the Board of Officials (*libu* 吏部). The marriage was illegal because Wuerhu had not received permission from his company captain. The company captain uncovered the marriage and reported to the emperor. The emperor ordered an senior imperial guard/chamberlain (*nei dachen* 内大臣), a department director of bondservants (Ma: *booi amban*; Chinese: *baoyi anbang* 包衣昂邦), and other officials to jointly adjudicated this case. The jurists stated that there were two crimes. One is privately marrying a daughter without permission from the company captain, the other marrying a daughter to an official in another banner. They further stated, *because Muqingge was an official and it was inconvenient to detain him to the inner place* (*neidi* 内地), or the imperial palace, to adjudicate, the jurists asked the emperor to have *this case adjudicated by the Board of Punishment* (my emphasis). The emperor order the Board of Punishment to adjudicate this case (NGTB, 1871-9).

³⁵ This case was sentenced in accordance with the Qing code. Song Er was sentenced to exile for 3, 000 *li*, but he was exempted from banishment because he was a person under Wu Sangui.

On December 13, in 1654, a bondservant Yingge 應哥 gambled and was caught. Yingge was sent to his *booi da* Ta-ming 塔命. Ta-ming memorialized the incident to the emperor and the emperor ordered “all *booi da* to adjudicate.” These *booi da* interrogated and found that *Ying-ge had committed the same crime of gambling before and they stated that this case should be sent to the Board of Punishment. The Shunzhi Emperor ordered the booi da to send the case to the Board of Punishment* (my emphasis) (NGDK, 006504; MQDA, A021-064).

All cases were sent to the Board of Punishment for various reasons. The first and third cases suggest that cases involving bannermen were first treated in the banner system, before going to the Board. Even without other direct evidence, it can be concluded that the banner system could handle minor cases. Usually, company captains or *booi da* took charge of minor cases. In similiar cases, *booi da* and company captains sent cases directly to the emperor. This phenomenon reflects the importance of company captains and *booi da* in the banner system. The importance of company captians can also be supported by Liu Shijie's 1655 suggestion that minor cases should be adjudicated by company captains.

Na Silu argues that the Banner Commanders participated in adjudicating banner cases (Na, 1992: 157). During the Shunzhi period, memorials preserved in both Beijing and Taipei show that banner commanders seldom participated in adjudications. In some cases, the banner commander was involved, but these cases did not support that the banner commander played any role in adjudications (e.g. NGDK, 086748).

The above three cases were not adjudicated by the Imperial Household Department at all. Because of the special status enjoyed by the emperor's bondservants (or bondservants of the Upper Three Banners after 1650), the juridical procedure for cases

involving such bondservants experienced changes. The Imperial Household Department was established before 1644, but from the sources I have read, it did not adjudicated cases in the period from 1644 to 1654. In 1654, Shunzhi abolished the Imperial Household Department and set up instead thirteen yamens to manage the imperial household affairs. This was part of the story that the Shunzhi emperor adopted the Ming systems. On December 1, 1654, the Shunzhi Emperor decided to re-establish the Shangfang Si or the Judicial Department (QSL, SZ. Vol. 86: 681).³⁶ Shangfang Si changed its name to Shangfang Yuan in 1655, and this institution later became Shenxing Si (慎刑司) under the Imperial Household Department (GXHDSL, vol. 1170: 647, 652). Shangfang Si took charge of judicial affairs of the Bondservants of the Upper Three Banners, cases of eunuchs, and cases in the imperial palaces and gardens.

Archival cases verify that the Judicial Department³⁷ took charge of cases involving only persons belonging to the later Imperial Household Department after 1655. *Booi da* or company captains just sent cases to the Judicial Department. The earliest case I found happened in 1655. In that case, a bannerman Tian Shou, a bondservant in the Bordered Yellow Banner, killed another bondservant under the same company captain. After the Judicial Department investigated, it concluded that this case should be sent to the Board of Punishment, suggesting that the Judicial Department must send severe cases to the Board of Punishment (NGTB, 1894-6). The Judicial Department, like other banner institutions, must send cases involving civilians to the Board of Punishment (NGTB, 1914-1). One

³⁶ Shangfang Si became the fourteenth yamen, but generally, these yamens were called thirteen yamens. It is not clear about the Shangfang Si before 1644. I do know when it was reestablished and abolished.

³⁷ This is the translation for different terms, the Shangfang Si, the Shangfang Yuan, and the Shenxing Si.

case also shows that the Judicial Department must send cases to the Board of Punishment if bannermen other than the bondservants of the Upper Three Banners were involved in (NGTB, 1921-10).

In short, from 1644 to 1655, the Imperial Household Department did not work as a judicial yamen. Cases from the emperor's bondservants were first adjudicated by *booi da* or company captians. The only speciality for these bondservants might be lie in the procedure. That is, because bondservants were special bannermen as the emperor's personal servants or slaves, the bondservant *Booi da* or company captain could deliver memorials to the emperor.

Generally, for bannermen, the judicial system shows a strong continuation with their Manchu system. The Qing court basically kept its Manchu two-level judicial system. The Judicial Department for the bondservants of the Upper Three Banners worked as the first level in the judicial procedure like company captains in regular banners. Also, just like in Manchuria before 1644, many bannermen brought cases to the Board of Punishment directly. Therefore, many minor cases involving only bannermen were also adjudicated by the Board of Punishment. Of course, there were also some new circumstances. For example, the banner system could not adjudicate any cases involving civilians. These cases should be sent to the Board of Punishment.

The Five Wards

Censors of the Five Wards could also adjudicate minor cases. Before 1653, whether the censors of the Five Wards adjudicated minor cases was not so clear. I personally deduce that the Five Wards could conclude minor cases only involving civilians. My deduction has four reasons. First, the Ming system granted censors of the

Five Wards the power to adjudicate minor non-criminal cases in 1586. The new dynasty ruler had no reason to exploit the censors' power. Second, the emperor treated the Five Wards as a regular juridical institution before 1653. On September 8, 1651, the emperor issued an edict to regulate the proper procedure of sending complaints. That edict requires that "in Jingshi, those who have received unjust treatment should send complaints to the censors of the Five Wards, the Shuntian Prefecture, and the two counties of Daxing and Wanping. If censors, prefects, or magistrates do not approve the case or the adjudication is not fair, [those who have received unjust treatment] can go to the Censorate and the Office of Transmission to appeal through memorializing" (QSL, SZ, vol. 58: 462). This edict clearly shows that the Five Wards worked as the first level court in Jingshi and they could adjudicate cases. On May 13, 1653, because of a drought, the Shunzhi emperor ordered judiciary institutions to immediately conclude cases with less severe punishments. Among these institutions in Jingshi, the Five Wards was listed as parallel with the Shuntian Prefecture, Daxing and Wanping counties (QSL, SZ, vol. 74: 584). The Five Wards was a regular juridical institution.

Third, a case in 1652 also indicates that censors of the Five Wards could adjudicate minor cases involving only civilians. In this case, civilian Zhang San 张三 owed one tael and four *qian* silver to eunuch Chen Guozhu 陈国柱. Chen Guozhu invited a music worker (*yuegong* 乐工) Liu Guize 刘贵泽 and a civilian Zhao Quezi 赵瘸子 who worked as a middleman to dun him. Zhang San did not have money and Chen Guozhu coerced Zhao Quezi to "take the debt instantly." In the process, Zhao wounded Zhang San's kidney. Chen Guozhu brought a complaint to the Yamen of Censors of the Western Ward. The Han censor Zhang Wenbing 张文炳 heard the case together with banner

censor Lu Xingzu 卢兴祖. According to Zhang San, it was Liu Guize who wounded him, but Liu Guize argued that Zhao Quezi did. Under such a circumstance, it was necessary for the censors to apply torture to Liu. Because Liu was a music worker, the Western Ward inquired of the Board of Rites whether Liu had submitted to the banner system (*shì fǒu tóu chōng* 是否投充). The Board of Rites replied “it is true that Liu is a music worker. Liu is not a *touchong* bannerman. If his performance is good, we will use him. If his performance is not good, we will expel him.” Then the censors tortured Liu Guize. Liu Guize was wounded, and he reported the story to the Board of Rites. The Board of Rites summoned the two censors, and the two censors admitted the whole story to the Board of Rites. The Board of Rites then informed the case to the Board of Punishment. The summons was absolutely a shame for the two censors. Zhang Wenbing memorialized the case to the emperor and asked the emperor to order the Board of Punishment to punish Liu Guize severely. In the memorial, Zhang Bingwen described the necessity to torture Liu Guize and stated that the Board of Rites’ reply that Liu was not a *touchong* obviously permitted the two censors to implement the law (to torture Liu). Zhang Bingwen further stated that the whole money quarrel had nothing to do with Liu Guize, how could he get involved in it and even dare report the story to the Board of Rites? Zhang Bingwen concluded that “the music worker is as mean/debased (*jian* 贱) as actors, but I am Your Majesty’s *official who implements the law* (my emphasis). If this wind blows up (*cifengyizhang* 此风一长), malefactors will follow it and [the court] dare not to implement the law (*sanchi* 三尺). Where is the decency of the court? What was the duty of censors?” (NGTB, 1857-3)

This case indicates that the censors of the Five Wards could settle minor cases involving only civilians. Zhang Wenbing called himself the emperor's official who implemented the law. This case was eventually sent to the Board of Punishment because Liu Guize reported it to the Board of Rites, and the Board of Rites summoned the two censors and informed the case to the Board of Punishment.

Lastly, Qing regulations after 1653 also strongly indicate the Five Wards could conclude minor cases involving only civilians before 1653. The earliest regulation was established in 1653. According to this regulation, in the area where Manchus and Han resided together, cases of theft of clothings, of beating, and other minor cases were all adjudicated by [the censors of] the Five wards (GJTS, vol. 769: 37). This regulation clearly states that censors of the Five Wards could judge minor cases in places where Manchus and Han lived together. This regulation put all minor cases in some areas under the jurisdiction of the Five Wards. Criminals' identities as civilians or bannermen were not important.

The above 1653 regulation dealt with cases where Manchus and Han lived together. This phenomenon, to some extent, reflects a self-evident fact that the Five Wards could conclude minor cases involving only civilians. This argument can also be supported by a memorial from Xiao Jiazhi 蕭家芝. Xiao was a director of Shandong Department at the Board of Punishment. Xiao Jiazhi criticized the phenomenon that the Five Wards sent many minor cases like theft or beating to the Board of Punishment and suggested clarifying the Five Wards' juridical responsibility. In this memorial delivered on March 3, 1655 Xiao Jiazhi (NGDK, 006101; MQDA, A021-135) stated,

The Five Wards were the judiciary crux of the forbidden places (*jindi* 禁地) or Jingshi; and the Board of Punishment was the judiciary headquarter of the provinces. Recently I see cases of theft and affray are sent to the Board for trial, I do not know what the Five Wards take charge of. If [the Five Wards] say that cases involving Manchus, it was inconvenient for officials of the Five Wards with the seventh rank to sentence, what the Five Wards implement is the law of the imperial court. How can it be inappropriate to implement the law of the imperial court? It is the yamens of the Five Wards who contact with Manchu and Han soldiers and civilians. If [Your Majesty] have the Five Wards implement their responsibility, soldiers and civilians will know scruples when they look up (*jumu* 举目), and violators will be less. Therefore, the law and discipline will be clearly [implemented] and my Board can concentrate on imperial commissioned cases.

The phenomenon Xiao criticized also happened before 1653. Xiao's memorial clearly releases following information. First, in 1655, the Five Wards sent many minor cases to the Board of Punishment, and this practice was not an ideal one. Second, the Five Wards sent minor cases to the Board mainly, because it was inconvenient for the censors to conclude cases involving Manchus. Third, the Five Wards implemented the law of the imperial court, and Manchus should also be subject to the imperial law. Last, if the Five Wards did what they were supposed to do, the situation in Jingshi would be much better in the juridical area. In sum, Xiao strongly advised the emperor to have the Five Wards conclude all minor cases even if Manchus were involved. Xiao's suggestion implicitly reflects the self-evident fact that the Five Wards could conclude minor cases involving only civilians.

A Qing regulation for cases inside the city wall of Jingshi established in 1656 further supports my argument. According to this regulation, for trival matters happened inside the city wall of Jingshi, such as debt and affray, if both accuser and the accused were bannermen, the Five Wards must send these cases to the Board of Punishment; if the case involved both bannermen and civilians, it was adjudicated by the Five Wards as before (GXHDSL, vol. 1031: 348). Whereas the Five Wards could adjudicate minor cases

that took place within the city wall, they must send minor cases involving bannermen alone to the Board of Punishment. This regulation, just like the 1653 one, also indicates a self-evident fact that Five Wards could conclude minor cases involving only civilians, and that the Five Wards could conclude minor cases involving both civilians and bannermen.

Based on the analyses above, it can be concluded that before 1653, the Five Wards could conclude minor cases involving civilians alone. In 1653, the Qing court authorized the Five Wards to adjudicate cases in places where Manchus and Han lived together. The 1656 regulation permitted the Five Wards to adjudicate cases involving both bannermen and civilians except cases involving only bannermen inside the city wall of Jingshi.

The Board of War

As discussed above, the Board of War controlled the patrolling and arresting battalions in Jingshi. The Board of War was involved in the judicial system mainly through the adjudication of fugitive cases, which I will discuss separately. Other than fugitive cases, I am only aware of one example that the Board of War concluded a case in 1652. It was an economic case concerning no crimes. This case brought out the debt case between Zhang San and Chen Guozhu I analyzed above. According to the two censors of the Western Ward, the eunuch Chen Guozhu accused Zhang San of stealing his donkey and the Board of War sentenced that Zhang San compensate Chen Guozhu in silver payment (NGTB, 1857-3).

Despite the scarcity of archival cases, it was very reasonable to conclude that the Board of War was granted the power to conclude some minor cases after 1644. When Liu Shijie, an official at the Board of Punishment, opposed the Board's adjudication of minor cases in 1655, he suggested that minor cases in Jingshi be settled by company captains, the

Five Wards, or the Board of War. The Board of War was listed as an institution parallel to the other two.

Different from the Five Wards, which actually worked as the local government of Jingshi during the Ming and Qing dynasties and its function penetrated every aspect of the administration of Jingshi, the Board of War was basically a military institution. The Qing court did not set any police agencies in modern sense. Considering the fact that in the Ming dynasty, the military institution Jinyi Wei also actually worked as a judiciary and police institution and that the Jinyi Wei was a notorious yamen, it is reasonable that the Qing court did not grant the Board of War much juridical power. All major cases must be sent to the Board of Punishment. The Board of War and its subordinate yamens never acquired similiar power to that of the Ming Jinyi Wei.

In 1655, the Qing court ruled that criminals arrested by the patrolling and arresting battlions should be sent to the Supervisory Yamen on Arrest, and then be transferred to the Five Wards for trial. If the possible punishment was penal servitude or above, the Five Wards should record confessions and testimonies and send them to the Board of Punishment; otherwise, the Five Wards could conclude these cases (GJTS, vol. 769: 39). The fugitive cases were excluded in this regulation. Such a regulation indicated that the Qing court did not grant the Board of War too much juridical power. The court Qing obviously did not want another Jinyi Wei.

The Qing Jinyi Wei, which usually referred to the Yamen of the Commander-general of Metropolitan Infantry Brigade, had not been established during the Shunzhi reign. Na Silu aruges that at the begining of Shunzhi reign this yamen was granted the power to adjudicate cases in which the maximum sentencing was bambooning

(*chizhang anjian* 笞杖案件), even though there are no written regulations to this effect.

He also argues that the yamen could investigate and interrogate cases punishable by penal servitude or above (*tuzui yishang anjian* 徒罪以上案件) though not sentence such cases (Na, 1992: 307-9).

My evidence suggests another picture. First, the categorization of cases by severity of punishment, the most popular categorization among Qing legal scholars, did not make any sense in Jingshi before 1653. This categorization was based on the penal system of five punishments in the Qing code while, as I will discuss next, the Qing court did apply the penal system of the five punishments until 1653, and the full application did not happen until 1656. Second, the Yamen of the Commander-general of Metropolitan Infantry Brigade was not established until 1674.³⁸ The *Qing shizu shilu* does not have any records about this yamen, not to mention its role in the judiciary system. Lastly and most importantly, if the Yamen of Commander-general of Metropolitan Infantry Brigade had investigated and interrogated cases punishable by penal servitude or above, it would be expected that some cases adjudicated by the Board of Punishment were sent by this yamen. However, as far as I see, no case was sent by this yamen. On the contrary, soldiers from the Infantry Brigade and the patrolling and arresting battalions (they were under this yamen later) sent cases directly to the court, either the Board of Punishment or any of the banner yamens. For example, in 1654, banner servant Zhang An wounded four fellow servants. An infantry patrol arrested Zhang An and sent him directly to the Board of Punishment (NGTB, SZ, 1877-10).

³⁸ According to Tan Yanwei, this yamen was established in 1674 (unpublished paper). Sources I have read support this argument.

In sum, in the first level of the judicial system of Jingshi, company captains, *booi da*, the Five Wards, and the Board of War could conclude minor cases but must send more severe cases to the Board of Punishment. Besides the potential punishments, the involved persons' identities also played an important role in the juridical procedure. Before 1653, the juridical system reflected Qing segregation policy. The banner system could not adjudicate any cases in which civilians were involved; the Five Wards could not adjudicate cases in which bannermen were involved. These cases were adjudicated by the Board of Punishment. After 1653, an involved person's identity became less important. In 1656, the Five Wards could adjudicate cases in which civilians and bannermen were involved, though it still must send cases involving only bannermen inside the city wall to the Board of Punishment; the Imperial Household Department and other banner institutions also must send cases involving civilians or bannermen from other banners to the Board of Punishment. Bannermen could bring litigations or report wrongdoings to the Board of Punishment directly. Therefore, many minor cases involving bannermen were adjudicated by the Board of Punishment.

2. The Second Level

The Board of Punishment was the juridical institution in the second level. In this level, the Qing system shows a discontinuity from the Ming counterpart. During the Ming dynasty, the backbone of the judicial system in Jingshi was the Three High Courts. Among them, the Two High Courts, the Board of Punishment and the Censorate served the first level while the Grand Court of Revision was in the second level. The Qing court made the Board of Punishment the real judicial center in Jingshi. First, the Censorate lost

its position as a major judicial institution to adjudicate cases involving officials in Jingshi. All major cases, regardless of commoners' or officials', were adjudicated by the Board of Punishment. From the archives we see that the Censorate did adjudicate a few cases, but these adjudications were exceptions. Second, regular cases adjudicated by the Board of Punishment, except those concerning death, were no longer sent to the Grand Court of Revision for review.

These two points are supported by numerous “immediate examination” cases in this period, showing the Board of Punishment's sole role in adjudication. For example, in a case in which a clerk Yang Qing 杨庆 made mistakes in receiving government documents. The Board of Punishment sentenced Yang Qing to ten actual blows of the heavy bamboo and memorialized it to the emperor on June 8, 1652. The emperor approved the Board of Punishment's judgments (NGTB, 1851-16). This was just one of the numerous cases adjudicated by the Board and approved by the emperor.³⁹

Some Han officials opposed such changes and they tried to reinstate the Ming system. For example, on August 17, 1645, Fang Kezhuang 房可壮 who was the chief-judge of the Grand Court of Revision (*dalisi qing* 大理寺卿) and other officials requested returning the original function of the Grand Court of Revision. Fang and other officials stated that the Grand Court of Revision originally had the function of reviewing and refuting cases. “Now in order to avoid the harmful effects of delay of the former dynasty, everything has to be simple and fast. Even for cases as weighty as capital ones,

³⁹ More examples may be found at NGTB, 1834-6, 1834-9, 1836-13, 1837-2; NGDK, 119263, 086972, 085692.

they are only orally memorialized with green-topped tally (*lütou pai* 绿头牌)⁴⁰ and the written memorials are added after the execution. This seems not good law. It will be no better than to return the duty of refuting and reviewing to the Grand Court of Revision. But the key lies in the early promulgation of the code and careful selection of jurists.” Dorgon agreed to return the Grand Court of Revision’s original responsibilities (QSL, SZ, vol. 18:165).

Fang Kezhuang’s memorial shows that by 1645 the Grand Court of Revision had lost its function as a higher court above the Board of Punishment. Archival cases show that the Grand Court of Revision never recovered its original power. As I will discuss later in this chapter, before 1653 the Grand Court of Revision only reviewed or adjudicated capital cases in the provinces. Its power in this respect was limited in Jingshi. Before 1653, capital cases in Jingshi were adjudicated by the Board of Punishment and were approved by the emperor without any review by the Grand Court of Revision.

As discussed in the previous section, the preliminary courts like the Five Wards could conclude major and minor cases in Jingshi. Qing records also demonstrate that the Board of Punishment could conclude minor cases in Jingshi. This is a tremendous improvement by which the emperor no longer must approve every minor case originating

⁴⁰ The green-topped tally was used when an official orally reported something to the emperor. Originally, only when something urgent or trivial happened, did the official orally report it to the emperor by showing the green-topped tally. In the early Qing, however, according to a censor Gao Qushe 高去奢, the six boards memorialized big or small things orally with green-topped tally. Gao suggested that every memorial should be written. On June 26, 1645, the Prince Regent Dorgon endorsed Gao's suggestion, ordered that officials in the six board to send written memorials and stopped memorializing with the green-topped tally (QCGSY, vol. 2: 72-3). In practice, the green-topped tally was still occasionally used. In 1653, the Shunzhi emperor ordered officials again to stop using the green-topped tally (QSL, SZ, vol. 73: 577). In 1660, the Qing court permitted to use the green-topped tally when dealing with Mongols (QSL, SZ, vol. 133: 1026). But anyway, after 1645, among cases I read, the Qing court did not execute any criminals by memorializing with the green-topped tally.

in Jingshi. Two pieces of evidence support my argument. First, regular memorials preserved in both Beijing and Taipei from the early Shunzhi period were mostly major cases, cases transferred from the emperor, or cases involving officials. One possible explanation for this phenomenon is that the Board of Punishment concluded minor cases by itself and did not memorialize them one by one to the emperor for approval.

Second, a memorial dated June 12, 1653 demonstrates that the Board of Punishment could conclude minor cases. Three types of cases were discussed when the Board memorialized its work in one month. The first was minor cases (*xiaoshi* 小事) concluded by the Board. The Board memorialized these cases to the emperor once every ten days. The second was cases concluded with the approval of the emperor (*tijie* 题结). This *tijie* cases referred to cases of officials and major cases of banditry, deaths, and the second-time escaped criminals. There were eighty-six *tijie* cases in that month. The third type of cases, called affairs (*shijian* 事件), referred to cases concluded by the Board (*bujie* 部结). These were exile, penal servitude, and bambooning cases. In that month, there were fifty such cases concluded by the Board. Obviously the first type of *xiaoshi* was part of the *bujie* cases (NGTB, 1865-16).

This memorial shows that the Board of Punishment could conclude exile, penal servitude, and bambooning cases without the emperor's approval, but the Board must report these cases collectively to the emperor. Cases involving officials and cases of bandits, deaths, and the second-time escaped criminals must be approved by the emperor before the judgments were implemented. The cases mentioned here referred to those both in the provinces and in Jingshi. Clearly, minor cases in Jingshi could be concluded by the Board.

3. The death penalty in Jingshi

Generally speaking, there were two levels in the juridical system in Qing Jingshi regarding to major cases. For capital cases, however, the adjudication was far more complex. According to the Qing code, death penalties were subdivided into two categories of “immediate” and “after the assizes.” Immediate death penalty meant that the sentence would be carried out without further review, whereas “after the assizes” refers to sentences that were, as previous scholars have understood, reviewed at the Autumn Assizes or Court Assizes, where punishment might be reduced or commuted.

The Ming-Qing transition caused huge confusions in both the categorization and the adjudication of capital cases because the Qing ruling house imposed the Manchu juridical system on the Han people. Before 1644, Manchus did not implement the review system at the assizes. Shortly after 1644, the Ming system of the death penalty after the assizes was temporarily suspended. It was resumed in November 1644 in the provinces (QSL, SZ, vol. 10: 102), though the practice did not resume in Jingshi until 1653.

The adjudication of capital cases in Jingshi underwent tremendous changes during this period. First, from 1644 to 1653, by following the Manchu juridical system, capital cases were adjudicated by the Board of Punishment without further review. From 1653 on, the Shunzhi emperor, who professed Han culture, managed to restore the Ming system in adjudicating capital cases. After a complex zigzag of changes, the juridical procedure of capital cases became stabilized in 1655. A capital case was typically adjudicated by the Board of Punishment, then reviewed by the Three High Courts. This procedure became the standard of the juridical procedure of capital cases, but it was not unusual for the Board of Punishment to adjudicate capital cases alone without the review

by the Three High Courts. As an effort to reinstate the Ming system, the Court Assizes was also restored in Jingshi in 1653.

It is worth noting that reinstating the Ming system was a complex process and the Qing court did not simply copy the Ming system but inherited it with revision. The general tendency for the adjudication of capital cases from 1631 became more and more bureaucratic, and in any case, the emperor reserved the power to reject or revise recommended punishments offered by the Board of Punishment, the Three High Courts, or other institutions like the Deliberative Council of princes and ministers (*yizheng wang dachen huiyi*). I will delineate the changes of the adjudication of capital cases chronologically.

Continuing the Manchu juridical system (1644 -1653)

From 1644 to 1653, Jingshi was really a specific judicial zone. Capital cases were adjudicated by the Board of Punishment and usually approved by the emperor without the involvement of the Three High Courts. Before August 1645, oral approval of death penalties was a common practice. After recommending punishment (very occasionally charging crimes), the Board reported the case orally, and the Prince Regent usually orally responded. The execution was carried out immediately and the written memorial were added after the execution. For example, Wanping civilian Yang Er 杨二 was accused of colluding with several others and robbed a peddler of some silver by wounding the peddler. The censor of the Southern Ward forwarded the case to the Board of Punishment, which recommended beheading. The Prince Regent approved the sentence on January 20, 1645. A written memorial was sent to the emperor next day and the imperial rescript on the memorial replied “Yes, [WE] know it” (NGDK, 088219).

This practice – execution with oral approval – was not in accordance with the Ming bureaucratic rule and also showed no respect for the lives of human beings. As mentioned above, Fang Kezhuang, the chief-judge of the Grand Court of Revision opposed this practice and argued that “this seems not a good law.” Fang suggested that the Grand Court reinstate its original power it enjoyed in the Ming dynasty (QSL, SZ, vol. 18:165).

The Prince Regent agreed to restore the Grand Court’s original duties, but the Grand Court actually never recovered the duty that it enjoyed in the Ming. First, capital cases originating in Jingshi were not reviewed by the Three High Courts at all before 1653. The Three High Courts only reviewed capital cases from the provinces, and did not touch cases involving Manchus. Second, it was a common practice for the Three High Courts to review capital cases from the provinces after 1644, but the review process was different from that in the Ming period. In Ming China, joint review of adjudication by the Three High Courts was not common. Provincial capital cases were reviewed while Jingshi capital cases were adjudicated by the Censorate or the Board of Punishment before being redressed or re-adjudicated by the Grand Court (Na, 2002: 212). In Qing China, the Three High Courts reviewed or sometimes re-adjudicated together.

Besides the execution with oral approval, the Qing court did not sentence any person to the death penalty after the assizes in Jingshi before 1653. Before November 1644, the Qing court did not apply the system of execution after the assizes in the provinces, either. Dorgon’s response to a Han official’s suggestion made Jingshi different from the provinces after November 1644. The vice-minister of the Board of Punishment Dang Chongya 党崇雅 made this suggestion on November 19, 1644. He stated that death

penalties originally had two categories: one was immediate death, the other death after the assizes. For death after the assizes, “there were statutes of Summer Assizes (*reshen* 热审) and of Court Assizes in Jingshi. Every year only after the hoar frost descends (*shuangjiang* 霜降), did [officials] ask the emperor to execute [criminals]. In the provinces, there were also sub-statutes for Autumn Assizes in which criminals were jointly reviewed by the three commissioners.” Dang bravely asked the Qing ruler to distinguish between criminals who must be executed without delay and criminals who needed to be considered at the Autumn Assizes. Dang further requested to apply the Ming code. In response, Dorgon reinstated the death penalty after the assizes in the provinces (QSL, SZ, vol. 10: 102). Dorgon only partly adopted with Dang’s suggestions and he clearly distinguished between Jingshi and the provinces. Neither the review of the Three High Courts nor the death penalty after the assizes existed in Qing Jingshi before 1653. In this sense, neither the Ming code nor the Qing code was strictly followed since both codes distinguish immediate death and death after the assizes.

Furthermore, the Board of Punishment adjudicated capital cases without respecting the law. For example, in a case memorialized in 1652, civilian Huang San 黄三 was sentenced to beheading. Huang San was accused of beating a low status bannerman Bai Yetu 白丫兔 by Bai's father before the Board of Punishment. Huang did not admit to the crime, but the Board still made a recommended beheading penalty without referencing to any law. The Board of Punishment stated,

Though Huang San did not confess, shop-manager Jing Da testified that Huang threw a brick and a pot, beating Bai Yatu to death; neighbors from four directions heard that Huang had beaten somebody to death; Huang's own wife also heard that he had beaten somebody to death. The evidence is so clear that we recommend that

Huang San be beheaded as “compensation.” We ministers dare not to presume and we respectfully memorialize to [Your Majesty] for edicts.

The emperor approved the Board of Punishment's recommended punishment by saying “Huang San will be beheaded immediately” (NGDK, 085711). The case was adjudicated solely by the Board of Punishment without further review or co-adjudication by other yamens. For scholars familiar with Qing legal case report, it will be astonishing that the Board of Punishment did not cite any law in this case. We may also suspect the typicality of this case. Unfortunately, even though there were some versions of the citation of law from 1644 to 1653, it was very often that the Board of Punishment did not cite any law to adjudicate an immediate examination case, and capital cases were of no exception.⁴¹

In this case, Huang San killed Bai Yatu in an affray. If this case had been strictly adjudicated according to the Qing code, Huang San's punishment would be strangulation after the assizes; even if Huang had intentionally killed Bai Yatu, the punishment would be beheading after the assizes (GJTS, vol. 769: 18; DQLJJ, vol. 19: 327). But before 1653 the Qing court did not implement the punishment of the death penalty after the assizes in Jingshi at all, and many criminals like Huang San were sentenced to immediate death.

This was one expression of a dual juridical system from 1644 to 1653. Obviously, the Qing court did not implement some aspects of the Han juridical system in Jingshi due to the fact that a large number of Manchus there. The Qing court tended to maintain its Manchu system in the capital city which became the homeland for Manchus. This dual legal system placed not only Manchus but also some Han in many ways under the Manchu juridical system.

⁴¹ Other examples may be found at NGTB, 1849-1, 1851-6, 1851-12; NGDK, 089114, 089088, 119265.

For some Han officials, this dual juridical punishment that put Jingshi a special place violated the unification of the juridical system and equality of law. In 1648, the Grand Court of Revision, headed by the Chief Justice Sun Chengze 孫承澤, suggested resuming the system of the death penalty after the assizes in Jingshi. Sun and other officials described that the death penalty after the assizes was implemented in the outer (*wai* 外) regions, or the provinces, but not in the inner (*nei* 內) areas, or Jingshi. The Grand Court argued that this practice violated equality of law (*fei fa zhi ping* 非法之平). It suggested the Board of Punishment strictly follow the Qing code and implement the death penalty after the assizes in Jingshi (NGDK 038810; MQDA A008-118). The Grand Court made this suggestion under the name of pursuing the equality or equality of law , or more precisely, implementing the law equally between Jingshi and the provinces.

Archival cases demonstrate that Sun's suggestion did not come true until 1653 when the Qing court decided to resume the Court Assizes (Autumn Assizes)⁴² in the provinces and Jingshi. That year was important in Qing juridical history. The now grown Shunzhi emperor began actively and systematically to adopt many aspects of the Ming system.

Reinstating the Three High Courts in Jingshi (from April 17, 1653 to November 29, 1654)

The tenth year of the Shunzhi reign (1653) was in many ways a turing point in Qing juridical history. In that year, the Shunzhi emperor publicly stated that Zhu Yuanzhang was the finest emperor after the Han dynasty (202 or 206 BCE – 220 CE)

⁴² The Autumn Assizes and the Court Assizes were mutually used during the early Qing. In official documents, it was often called the Court Assizes.

because Zhu established good regulations and systems (QSL, SZ, vol. 71: 567). Shunzhi in many ways reinstated the Ming system. Two eminent changes happened in 1653 in terms of the death penalty. One was the Qing court's decision to have the Three High Courts participate in the adjudication of death penalty among immediate examination cases on April 17, 1653 (NGTB, 1868-12). The other was the decision to resume the Court Assizes in both Jingshi and the provinces with the request by Li Huaxi, the Minister of the Board of Punishment, on July 3, 1653 (QSL, SZ, vol. 76: 598).

Resuming the Court Assize presumed that some criminals were sentenced to death after the assizes. In the provinces, the death penalty after the assizes already existed. In Jingshi, as archives show, it was applied on May 19, 1653 at the latest, more than one month before the Qing court decided to resume the Court Assizes. On that day, the Three High Courts sent its sentence of a capital case to the emperor for approval. In this case, a bannerman was sentenced to strangulation after the assizes. According to court documents, *touchong* bannerman Zhang Xue 张学 beat a civilian to death in Shuntian prefecture. Zhang Xue's master reported the incident to the Board of Punishment. The Board of Punishment investigated the case closely and the Three High Courts jointly sentenced Zhang Xue to strangulation without citing any law. This sentence referred to immediate strangulation before 1653. However, in the memorial, the imperial rescript says "Zhang Xue [will be strangled] as recommended. Detain him and execute him after the Autumn Assizes⁴³ (*qiuhou* 秋后). All others will be executed as recommended" (NGTB, 1863-11).

⁴³ It could simply refer to the Court Assizes.

Two days later, the Three High Courts itself sentenced a criminal to strangulation after the assizes and memorialized to the emperor for approval. In that case, civilian Ma Da beat a slave (also a bannerman), who eventually died of his wounds. The bannerman's master reported the case to the censor of the Northern Ward. After investigation, the censor of the Northern Ward transferred the case to the Board of Punishment because it was a case concerning death. The Board of Punishment re-interrogated and confirmed the Northern Ward's description. The Three High Courts jointly sentenced Ma Da to strangulation after the assizes without citing any law. The imperial rescript concurred, stating "Ma Da will be strangled as recommended. Detain him and executed him after the Autumn Assizes" (NGTB, 1863-18).

In a word, the death penalty after the assizes was resumed among immediate examination cases at the latest on May 19, 1653. Besides the resumption of the death penalty after the assizes, the Three High Courts began to participate in the adjudication of capital cases. An imperial rescript issued on April 17, 1653 says "From now on, if [a criminal] commits offenses [so severe that he/she will be sentenced] to death, you Board [of Punishment] jointly adjudicates the case with the Censorate and the Grand Court of Revision. [You the three yamens] respectively make recommended adjudications" (NGTB, 1868-12).

This imperial rescript required that the Board of Punishment relay all death sentences to the Censorate and the Grand Court of Revision, which would jointly adjudicate the case. The examples of the trials of Zhang Xue and Ma Da followed these procedures. In both cases, as well as many other similar cases, the Board of Punishment firstly investigated the crimes, and then the Three High Courts co-adjudicated these cases.

In so revising practice, the Qing court re-continued the Ming practice. According to Na Silu (2002: 354), the emperor sometimes had the Three High Courts adjudicate important cases originating in Jingshi. But this practice did not become a stable system in the Ming dynasty and a case was usually adjudicated by the Board of Punishment or the Censorate and then reviewed by the Grand Court of Revision.

The Qing court made such a practice a formal system in 1653, but it was just a beginning of a complex zigzag of change, and the Qing ruler changed the procedure very soon. The Three High Courts might have different opinions about the story and the adjudication of each case and these differences induced the juridical changes for capital cases. For example, on May 19, 1653, the Three High Courts memorialized a case in which an official was beaten to death. The Three High Courts had two different judgments. In this case, the official Li Tiancheng 酈天成 borrowed some money from He Er 何二, and Cheng Jiangong 成簡公 acted as a guarantor. He Er required that Li return the money, and He quarreled with him. Li Tiancheng was beaten and died after eight days. He Er fled. Cheng Jiangong, who had accompanied He Er on his visit to see Li, reported that He Er had beaten Li Tiancheng. Other testimonies suggested, however, that Cheng Jiangong had beaten Li Tiancheng. This case was reported to the Yamen of the Censors of the Southern Ward, then to the Board of Punishment. The Board investigated the case and jointly adjudicated it with the Censorate and the Grand Court of Revision. During the adjudication, the Censorate and the Grand Court of Revision stated that Cheng Jiangong beat Li Tiancheng, causing his death. They sentenced Cheng to strangulation as a “repayment.” The Board of Punishment, however, argued that Cheng Jiangong just assisted He Er in the beating and He Er had fled, Cheng should be sentenced to exile with

blows of the heavy bamboo according to the statute of striking together with others [as a minor offender]. Because there was an imperial amnesty, the exile should be exempted and Cheng should still be beaten by forty blows. The emperor agreed with the Board of Punishment by saying “Cheng Jiangong [will be punished] according to the Board of Punishment’s sentencing. He Er will be sentenced when he is apprehended” (NGTB, 1863-13).

The outcome was that a case of exile—if the imperial amnesty had not been taken into account—was adjudicated by the Three High Courts. This kind of cases created a problem among the Three High Courts. According to the imperial rescript of 1653, the Board of Punishment must jointly adjudicate capital cases with the other two yamens, and the Board did not make recommended judgments when informing the other two branches. Therefore, the Board might pass on its recommended sentencing in a capital case to the Censorate and the Grand Court, but these courts might rule differently and indeed pass a sentence other than death. The case of Cheng Jiangong was not the sole example.

Hence, the Censorate was dissatisfied with the regulation of 1653. The Censorate memorialized to the emperor for change. The Censorate first praised the decision to have the Three High Court jointly adjudicate cases as a sign of the emperor’s benevolence. But then it complained that the Board of Punishment often sent non-death cases to the Three High Courts for adjudication. This practice, according to the Censorate, did not accord with the statutes or precedents (*dianli* 典例). The Censorate, drawing on the procedure of capital cases in the provinces where governor-generals, governors, or inspectors must offer recommended sentencing to the Three High Courts, suggested that the Board of Punishment should first adjudicate capital cases and then offer recommended punishments.

The Board of Punishment should memorialize recommendations to the emperor to have the Censorate and the Grand Court of Revision to review. The Censorate argued that its suggestion was in accordance with both the emperor's benevolence *and* statute and precedent (NGTB, 1868-12). The precedent refers to the Ming precedent. The Censorate's suggestion actually tries to reinstitute the Ming system as it understood. Cases memorialized in the eighth and ninth lunar month of the tenth year of the Shunzhi reign show that the Censorate's suggestion was applied (NGDK, 089422; 087547).

This suggestion evoked a hot debate about the judicial procedure of the adjudication of death cases among the immediate examination cases. The emperor, who tried to reinstate Ming procedures, endorsed the Censorate's suggestion and ordered the Board of Punishment to implement. The Board of Punishment complied with the emperor's edict but disagreed and memorialized for a reversal. The Board first argued that it never sent cases in which punishment was less severe than death to the Censorate and the Grand Court. The Board further alleged that for some cases in which criminals deserved sympathy or the offense was doubtful, the punishment was reduced by the Three High Courts. The Board argued that true value of review lay in the reduction. Then the Board stated that if it must recommend sentence to the Three High Courts, the Board, as the leader of the legal institutions, would be not different from governors and governor-generals in the provinces. Lastly, the Board argued that if must offer recommended adjudication, then it was not necessary to participate in the review and a capital case would be reviewed by the Censorate and the Grand Court—there was not such a regulation in the Collected Statutes [of the Ming]. The Board lastly asked to apply the original 1653 regulation (NGTB, 1868-12).

As the case of Cheng Jiangong indicates, the Board of Punishment's argument that it had not sent any case in which punishment was less than death penalty is not entirely true. In this case, it was the Board who sentenced Cheng to exile, even though the Board suspected him of murder. The emperor did not engage in this detail, but ordered the Three High Courts to carefully examine the precedents, make a solid suggestion, and memorialize to him (NGTB, 1868-12).

Both the emperor and the Three High Courts suggested looking for an appropriate procedure for the adjudication of capital cases based on Ming precedents. The Three High Courts carefully checked the Collected Statutes of the Great Ming (*Da Ming huidian*, 大明会典), drafted appropriate solutions, and presented them to the emperor for approval. Their suggested solutions and the reason behind these solutions reflected how the procedures for adjudicating capital cases were influenced by both the Manchu and the Ming systems. In their response, the Three High Courts did not show the same understanding of the former Ming system.

The Three High Courts had two views. One was proposed by the Censorate and the Board of Punishment. They first described the old Ming precedents: for capital cases in the provinces, the governor or governor-generals memorialized findings and recommended sentencing to the emperor who forwarded these to the Three High Courts; for capital cases in Jingshi, Jingshi yamens memorialized cases to the emperor who forwarded the cases to the Three High Courts. However, "in our dynasty, local officials cannot adjudicate persons under the banner system who have committed offenses and the cases involving both Manchus and Han. [These cases] have to be sent to the Board of Punishment. The Board of Punishment then drafts recommended judgment and

memorializes [to the emperor] for the final judgments.” The two yamens then described the emperor’s edict that ordered the Three High Courts jointly adjudicated capital cases originating in Jingshi. The two yamens stated that neither the emperor’s edict, nor the Censorate’s former suggestion was in accordance with the precedents. They suggested the emperor adopt either his original opinion or the Censorate’s former solution (NGTB, 1868-12).

A third solution was proposed by the Grand Court of Revision. After carefully examined the *Ming huidian*, the Grand Court suggested that “for cases that the emperor has ordered the Three High Courts to adjudicate, the Board of Punishment should investigate clearly, acquire testimonies, charge crimes, and make judgments, then the case should be sent to the Censorate for review, and after the review the case should be sent to the Grand Court for redress. Each yamen gives recommended sentences. Do not avoid different opinions. At last, [the Three High Courts] draft the memorial together and ask the emperor’s final judgments.” The Grand Court stated that its solution was in accordance with both the Ming precedents and the emperor’s new edict (NGTB, 1868-12).⁴⁴

The emperor accepted the Grand Court’s opinion and made it a statute on December 7, 1653 (NGTB, 1868-12; QSL, SZ, vol. 78: 618). Another Qing record in 1653 spells out this statute in more detail. “For things that the [imperial] edict has ordered the Three High Courts to review, the Board of Punishment adjudicates clearly, completes

⁴⁴As Na Silu points out, during the Ming dynasty, it was very unusual for the Three High Courts to co-adjudicate or co-review major cases originating in Jingshi (Na, 2002: 354). Na also points out that the *Ming huidian* stipulates that cases jointly reviewed by the Three High Courts had already been adjudicated by the Board of Punishment or the Censorate (Na, 2002: 355; DMHD, vol. 214: 555).

testimony, decides crimes, writes proposed verdicts (*zhuding kanyu* 注定看語), and sends it to the Censorate for examination. If the adjudication is verified to be correct, [the Censorate] sends it to the Grand Court of Revision for redress. [Then the Three High Courts] draft and send the memorial to the emperor. If the three yamens share the same opinion, collectively write sentences; if not, each yamen writes its own sentences, and memorializes” (GJTS, vol. 765: 26).

This solution divided the process of review into three agreement steps in sequence. A capital cases must be adjudicated first by the Board of Punishment, then be reviewed by the Censorate, and lastly be redressed or confirmed by the Grand Courts of Revision. In practice, capital cases (among immediate examining cases) were usually first adjudicated by the Board of Punishment, then reviewed (redressed or confirmed) by the Three High Courts. For example, in 1654, Wang San, a craftsman worked under the Board of Revenue, beat another craftsman Zhu Liu to death. The Board of Revenue sent Wang San to the Board of Punishment. The Board of Punishment investigated the case meticulously and sentenced Wang San to decapitation after the assizes according to the statute of intentional killing (*gu sha* 故杀). The Board of Punishment memorialized its adjudication to the emperor and on August 26, 1654, the emperor ordered the Three High Courts to review the case. The Three High Courts reviewed this case, agreed with the decision and memorialized to the emperor on September 30, 1654. The emperor approved the sentence (NGTB, 1875-9).

This is the regular way in which a capital case originating in Jingshi was handled after it was sent to the Board of Punishment after December 1653. Capital cases from the provinces involving Manchus also followed this procedure. From the memorial, it is hard

to judge whether the Censorate and the Grand Court of Revision reviewed the case in sequence, but a Qing record shows that before 1655 the Three High Courts worked separately. They neither adjudicated a case jointly, nor did they draft the memorial face to face for capital cases from both Jingshi and the provinces (QSL, SZ, vol. 94: 741).

The above has described the procedure of adjudication of capital cases in Jingshi from April 17, 1653 to November 29, 1654. From April 17, 1653 to December 7, 1653, the Three High Courts co-adjudicated capital cases. After December 7, 1653, a capital case was first adjudicated by the Board of Punishment, then, the Board memorialized to the emperor for further review by the Three High Courts. With a few exceptions, capital cases after 1653 must be adjudicated or reviewed by the Three High Courts. During this period, the Three High Courts often had different views on some cases (e.g. NGDK, 089423). It was not unusual for the Three High Courts to offer “two sentences” (*liangyi* 两议) to the emperor for approval.

The Deliberative Council participated in the review (1654 -1655)

From November 29, 1654 to the third lunar month of the twelfth year of the Shunzhi reign (1655), the emperor further complicated the procedure of the adjudication of capital cases. On November 29, 1654, the emperor issued an edict to require that all capital cases must be re-reviewed by the Deliberative Council after the review by the Three High Courts (QSL, SZ, vol. 86: 681). From then on, a capital case originating in Jingshi was first adjudicated by the Board of Punishment. The Board offered recommended adjudication and memorialized it to the emperor. The emperor usually ordered the Three High Courts to review it. After review, the Three High Courts memorialized to the emperor with recommended adjudication—either the same with or

different from that of the Board of Punishment. The emperor then ordered the Deliberative Council to review again. After review, the Deliberative Council offered their judgments—either the same with or different from that of the Three High Courts—memorialized to the emperor for final judgments.

For example, on October 22, 1654, a low status bannerman Erxiaozi 二小子 stabbed Ersun 二孙, another bannerman under the same master, in a fight. Ersun died five days later. Both Erxiaozi and Ersun were Yu Zide's 俞自德 slaves. According to Yu Zide, they fought because they were drunk. Erxiaozi was sent to the Board of Punishment. As a poor bannerman, Yu Zide asked the court to pardon Erxiaozi because he already lost Ersun and “if both slaves die, how can I make a living?” Despite Yu Zide's petition, the Board of Punishment still investigated the case and sentenced Erxiaozi to strangulation after the assizes according to the statute that “anyone who, during an affray, strikes, and kills another, regardless of whether he has struck with the hand, or the feet, or with another object, or with metal knife, will be punished with strangulation with delay” (DQLJJ, vol. 19: 327). The Board of Punishment memorialized it to the emperor on November 23, 1654. Two days later, the emperor ordered the Three High Courts to review the case. The Three High Courts reviewed and they did not have any different opinions. They memorialized to the emperor on January 18, 1655. The emperor ordered the Deliberative Council to review it again. The Deliberative Council reviewed and memorialized on February 26, 1655. The emperor finally approved the sentence by saying “Erxiaozi will be strangulated according to the recommendation. Detain him and execute him after the Autumn Assizes” (NGTB, 1883-8; 1884-16).

This is the regular procedure of the adjudication of capital cases after November 29, 1654. As this case shows, even though the case was very clear, it was still reviewed by both the Three High Courts and the Deliberate Council in sequence. This case was reviewed by the Deliberate Council not due to its complexity or the Three High Courts's different opinions.

Different from my analyses, Liu Jinghui argues that a case was sent to the Deliberative Council for review after the review of the Three High Courts because the emperor thought this case needed further consideration and it was a complicated case so that the Three High Courts could not draw one conclusion. Similarly, Liu argues that the emperor ordered the Three Courts to review a case because the emperor believed the Board of Punishment's sentencing needed further consideration (Liu, 1969: 65-6). It is very easy for Liu to find cases to support his arguments. The problem with Liu's analyses lies in that he does not distinguish between cases originating in the provinces and so-called immediate examination cases. Furthermore, he missed the changes occurring in 1653. The fact that the emperor ordered the Three High Courts, or the Deliberative Council to review a capital case does not necessarily mean that the case was complex or important, nor did the emperor necessarily dissatisfied with the Board of Punishment or the Three High's recommended sentencing.

My argument that a capital sentence was reviewed by the Deliberative Council was not not due to its complexity or the Three High Courts's different opinions could be further supported by the fact that before November 29, 1654 and after the third lunar month of the twelfth year of the Shunzhi reign, the Deliberative Council usually did not review capital cases. During other periods, the Deliberative Council only participated in

adjudication or review some major cases involving Manchu nobles especially imperial clansmen and really important cases, like the case of Chen Mingxia. That is to say, the Deliberative Council adjudicated or reviewed a case not because the case was complicated but because the criminal's status was important.

The Shunzhi Emperor who managed in many ways to adopt the Ming juridical system granted the Manchu noble more power by having the Deliberative Council review capital cases with an allegation to cherish human lives. Obviously, after 1653, the emperor's restoration of Ming juridical system jeopardized the Manchu legal tradition.⁴⁵ Shunzhi, as an emperor who professed Han culture, must balance between Manchu and Han. The Deliberative Council's participation in review of capital cases shows that reinstatement of the Ming system was not a easy project.

The Deliberative Council retreated (after April 1655)

After the third lunar month of the twelfth year of the Shunzhi reign (1655), a regular capital case was usually adjudicated by the Board of Punishment, then reviewed by the Three High Courts. The Deliberative Council did not review ordinary capital cases any more. I do not find any Qing records that tells this change, but archives support my arguments.

On April 19, 1655, the Three High Courts memorialized a capital case to the emperor. This was a fugitive case and the criminal was sentenced to strangulation after the assizes. The emperor directly approved the Three High Courts's adjudication without having the Deliberative Courts review (NGDK, 161190). One month earlier, such cases

⁴⁵ As I will discuss next, the relation between Manchu and Han officials was strained in 1654 when the struggle over the fugitive law became intensified. Manchu nobles forced the emperor to approve a very harsh fugitive law in the same lunar month when the Qing court decided to have the Council review capital cases.

must be reviewed by the Deliberative Council (NGDK, 089701). Also, a case memorialized on April 18, 1655 and several cases memorialized before that day show, after the Three High Courts memorialized capital cases to the emperor, the emperor ordered the Deliberative Council to review. Several cases were memorialized in the third month of the twelfth year of the Shunzhi reign, and the Deliberative Council completed the review after April 18, 1655 (NGDK, 089430, 086743; NGTB, 1889-1). On the contrary, after April 18, 1655, capital cases memorialized by the Three High Courts were not reviewed by the Deliberative Council anymore.

Based on archives, it can be safely concluded that after the third month of the twelfth year of the Shunzhi reign, regular capital cases were not reviewed by the Deliberative Council anymore. Highly probably, the change happened on April 18, 1655. After that time, a capital case was typically adjudicated by the Board of Punishment first, then reviewed by the Three High Courts, and lastly approved by the emperor. This was the most regular way. On November 16, 1655, the emperor ordered the Three High Courts to jointly adjudicate capital cases originating in Jingshi and to jointly review the capital cases from the provinces (QSL, SZ, vol. 94: 741). This further stipulated the review process. After that day, it was also very common that the Three High Court adjudicated cases in which the Board of Punishment investigated the case first (NGTB, 1894-8; NGDK, 088834; 087587). This was exactly the practice in 1653.

There were some exceptions. Sometimes, the Deliberative Council adjudicated or reviewed some sensitive or important cases especially those involving Manchu nobles or high officials. In Qing China, there was no separation between judiciary and administration, and all other *yamens* could participate in the adjudication or review of

capital cases. Throughout the whole Qing dynasty, it was also not uncommon that a capital case originating in Jingshi was adjudicated by the Board of Punishment and approved by the emperor without review by the Three High Courts. For example, on January 29, 1654, the Board of Punishment memorialized a capital case to the emperor and the emperor just approved the Board of Punishment's sentencing. In this case, a low status bannerman Liu Er 刘二 killed another low status bannerman during an affray. This case was directly reported to the Board of Punishment. The Board sentenced Liu Er to strangulation after the assizes according to the statute that “anyone who, during an affray, strikes, and kills another, regardless of whether he has struck with the hand, or the feet, or with another object, or with metal knife, will be punished with strangulation with delay” (DQLJJ, vol. 19: 327). The emperor approved this adjudication by saying “Liu Er will be strangulated according as recommended. Detain him and execute him after the Autumn Assizes” (NGTB, 1869-5). The emperor did not have the Three High Courts review it.

In sum, the adjudication of capital cases in Jingshi experienced complex changes during the Shunzhi reign. Before 1653, the Qing court simply followed the pre-1644 juridical procedure. The Board of Punishment solely adjudicated capital cases without further review by the Three High Courts. After 1653, the Shunzhi emperor managed to reinstate the Ming system. The reinstatement was not just to copy the Ming system. Han officials had different understanding of the Ming system, and the Qing court actually never restored the original Ming system in Jingshi. Shunzhi once had the Deliberative Council review capital cases. But this practice did not last long. In 1655, the Council did not review regular capital cases any more.

The complex changes of the juridical procedure for capital cases after 1653 was in many ways a continuation of the Ming practice. Except for the review by the Deliberative Council, all other changes concerned the understanding of the Ming system. The focus was that whether the Board of Punishment should charge crimes and made judgments before the Three High Courts co-adjudicated or co-reviewed. As Na Silu demonstrates, during the Ming dynasty, only under particular situation did the Three High Courts adjudicate or review cases. Na also argues that in the Ming dynasty, a major case could be adjudicated by the Board of Punishment first then reviewed by the Three High Courts; it could be solely co-adjudicated by the Three High Courts and be approved by the emperor; it could be adjudicated by the Board of Punishment solely without review by the Grand Court (Na, 2002: 276, 355-8).

After the Qing court ordered officials of the Three High Courts to review or adjudicate cases together on November 16, 1655, the Qing system actually followed various formats of Ming practices. A capital case could be firstly interrogated by the Board of Punishment and then be adjudicated by the Three High Courts. It could be adjudicated by the Board of Punishment and then reviewed by the Three High Courts. It was also not uncommon that a capital case was adjudicated by the Board of Punishment and approved by the emperor without any further review by the Three High Courts – this was also the Manchu system. In other words, the Qing system after 1655 actually was a combination of the previous Ming practice and the Manchu system that was already influenced by the Ming dynasty.

IV. Conclusion: Continuing Sinicization

Before 1653, the Qing court basically retained the 1631 two-level juridical system created by Hong Taiji. The Qing court even imposed this two-level juridical system on Han people in Jingshi. In the first level, the banner system, the Five Wards, and the Board of War could conclude minor cases. The Board of Punishment solely adjudicated major cases including capital cases without further review by the Three High Courts. This two-level juridical system, though influenced by the Ming system, in many ways was not in accordance with the Ming system. First, this juridical system to some extent reflects the segregation policy of the Qing. The banner system could not adjudicate minor cases involving civilians, nor did the Five Wards do cases involving bannermen. Second, capital cases were solely adjudicated by the Board of Punishment without further review by the Grand Court of Revision. Third, there was no death penalty after the assizes in Jingshi.

From 1653 on, the Shunzhi emperor had systematically adopted the Ming system, the processes I call the Shunzhi Restoration. Gradually, the Five Wards could adjudicate some minor cases involving bannermen. The Qing court also restored the death penalty after the assizes in Jingshi. Many capital cases were reviewed by the Three High Courts. These reforms de-signified the importance of criminals' identity as civilians or bannermen in jurisdiction and complicated the adjudication of capital cases. But the backbone of the two-level juridical system was preserved till the New Policy period.

Even though the Shunzhi emperor in many ways managed to reinstate the Ming juridical system, the Qing juridical system of Jingshi was never another copy of the former Ming one. The Qing rulers actually revised the Ming system and such revisions were in essence the internal change of the Ming system. For example, in 1586, the Ming granted the Five Wards to conclude non-criminal cases. In 1599, a censor suggested the Ming

emperor to have the Board of Punishment conclude cases punishable by bambooning in Jingshi (Na, 2002: 271-4). This censor's suggestion was not realized until 1644 when Manchus took Jingshi. Also, in the Ming dynasty, the emperor sometimes had the Three High Court co-adjudicated cases in Jingshi. The Qing reinstated the co-adjudication or co-review by the Three High Courts that was very similiar with the Ming practice.

The change of the juridical system of Jingshi redefined the relation among the Three High Courts. The Qing system after 1644 made the Board of Punishment the real center of the juridical system in Jingshi, as well as in the whole empire. The *Qingshi gao* (A draft history of the Qing Dynasty) (QSG, vol. 144: 4206) comments on this change:

Emperor Shizu was enthroned as the master of Central Xia (*zhongxia* 中夏),⁴⁶ and he continued the old Ming system. All outer litigations [in the provinces] were adjudicated level by level from county or department magistrates to governors or governor-generals; inner litigations [in Jingshi] belonged to the Three High Courts. However, in terms of the Three High Courts in the Ming system, the Board of Punishment adjudicated cases under Heaven, the Censorate inspected [the adjudication], and the Grand Court of Revision reviewed and refuted [adjudications]. According to the Qing system, all [major] criminal cases from the provinces were reviewed by the Board of Punishment. For cases that were not jointly reviewed, the Censorate and the Grand Court of Revision had no reason to intervene; for cases that should be jointly reviewed, the Board of Punishment took the leading in drafting verdicts. Cases in Jingshi, whether it was memorialized to the emperor [then the emperor forwarded to the Board of Punishment] or transmitted laterally [to the Board of Punishment], were all adjudicated by the Board of Punishment. Therefore, the power of the Board was especially weighty.

This comment in the *Qingshi gao* is from an overall perspective of the Qing legal system and it is largely in accordance with the historical facts. It is true that the Board of Punishment adjudicated almost all major cases in Jingshi. Regular exile and penal servitude cases had not to be reviewed by the Grand Court of Revision any more. Even for capital cases, which usually were reviewed by the Three High Courts after 1653, the Board of Punishment also played a leading role in making decisions on judgments.

⁴⁶ Central Xia means China. Emperor Shizu was the Shunzhi emperor.

The growth of the Board of Punishment's power also began with the Ming dynasty. The Qing adaptation of the Ming system in 1631 accounted for the importance of the Board of Punishment not only before but also after 1644, and Shunzhi's revision did not basically challenge the Board of Punishment's importance. In other words, the revision actually was a continuation of the internal change in the Ming system. In short, this chapter demonstrates that the Qing court continued adopting the Ming juridical system with revisions. Next two chapters will demonstrate that the Qing court also quickly recognized the authority of the Qing code and implemented the Han penal system of five punishments.

Chapter 4 Reinstatement of the Five Punishments and Retreat of the Manchu penalties

I. Introduction

In Chapter Three, I illustrated the change of juridical procedure in Jingshi and argued that the Qing dynasty continued adopting the Ming system after 1644. This chapter deals with the implementation of punishments during the Shunzhi reign, or the processes by which the Qing court reinstated the five punishments and abolished the Manchu penal system. It demonstrates that segregation can hardly explain the implementation of punishments in Jingshi during the Shunzhi reign, not to say after Shunzhi, and that the bannermen's legal privilege of commutation was a sign of Qing sinicization.

In 1644, the Qing ruler imposed Manchu penalties on both Manchu and Han. In response, Han officials drastically opposed the imposition and successfully persuaded the Prince Regent Dorgon to reinstate the five punishments⁴⁷ in the provinces no later than July 1645. From 1644 to 1653, the Qing court imposed the two-degree penal system on both bannermen and civilians in Jingshi. From 1653 to 1656, the Qing court reinstated the five punishments in Jingshi among civilians, but bannermen were still under the Manchu penal system. This was the only period when the Qing court implemented a segregation policy in Jingshi in terms of implementation of punishments. In 1656, the Shunzhi

⁴⁷ They included beating with the light bamboo, beating with the heavy bamboo, penal servitude, exile, and death.

emperor abolished the Manchu two-degree penal system in Jingshi and placed both bannermen and civilians under the authority of the five punishments. Bannermen's penalties of penal servitude or exile were commuted to wearing the cangue. The commutation admitted the orthodox authority of the five punishments. In short, the Ming penal system influenced and gradually predominated the Manchu system.

State of the field

Considering that the implementation of punishments and application of laws were integral processes of the adjudication, and that the former was actually part of the latter, my discussion of the state of the field will include both areas. A few historians have already paid attention to the application of the Qing code and the conflict between the Qing code and Manchu law during the Shunzhi reign. Zheng Qin (1996: 152-3) argues that the jurists applied the Qing code and the timely promulgation of the Qing code in 1647 stabilized society during the Ming-Qing transition. Su Yigong agrees with Zheng Qin in principle, but he further argues that history is not so simple. He argues that although the Qing jurists partly applied the Qing code after 1647, Manchu law still enjoyed a dominant status. Manchus did not respect the authority of the Qing code whose basis was from the Ming juridical system (2000: 119-123). Su further argues that the Qing code did not receive deserved authority until the early years of the Kangxi reign. Liu Jinghui (Liu, 1969: 50), based on two cases in which the *Shengjing dingli*⁴⁸ was referenced, argues that the *Shengjing dingli*, although had its own merit, was not the major law in adjudication in the Shunzhi period. Some scholars distinguish the process of charging crimes and the process of implementing punishments. They argue that in the

⁴⁸ It was part of Manchu law. It did exist, but scholars have not found it except for a few articles.

beginning of the Shunzhi period, even though the jurists applied the Ming code in charging crimes, they still followed the primitive Manchu penal system to punish criminals (DQLJJ, introduction, page 3). Su Qin (1992) has incisively noticed the conflicts between the two judicial systems and the bannermen's privilege of commutation as a way to apply the Qing code for bannermen.

The previous scholarship has not considered the processes by which the Qing court reinstated the authority of the Qing code and abolished its Manchu juridical system, as it has neither studied enough cases nor made distinctions between Jingshi and the provinces, between bannermen and civilians. Many scholars do not distinguish the application of law and the implementation of punishments. For those who have made this distinction, they have not done any research on the application of Manchu law. None of them has considered the legal inequality between Manchu and Han a sign of Qing adoptatoin of the Qing code. My research will draw on archives located in both Beijing and Taipei and other Qing records to reconstruct the story — Manchus abandoned their penalties and admitted the authority of the five punishments in the Qing code.

The two conflicting sets of penal systems and the analytical framework

During the early stage of the Shunzhi reign, there were two different sets of penal systems based on two sets of laws: the Ming and Qing codes (or Han codes) and Manchu law. In the Han penal system based on the Ming code or the Qing code, the five punishments were the standard penalties. The standard Manchu penalties after 1644 mainly referred to whipping and death. It therefore was considered a two-degree penal system and usually excluded penal servitude and exile. The punishment of death usually referred to immediate decapitation and did not include strangulation. For minor offenses,

the Manchu penal system applied lashing with the whip instead of beating with the bamboo.⁴⁹ Other Manchu penalties such as fining *tuhere weile* existed but were less significant than death and whipping.

This research will distinguish the application of laws and implementation of punishments. According to either Manchu law or the Ming and Qing codes, the two processes were an integral part of the adjudication. The two processes were to some extent separated in the early Shunzhi era. Because of the conflict between the two different juridical systems, the court might sentence banner men by the Ming code or the Qing code but punished them in accordance with the Manchu penal system. It becomes necessary to distinguish the two processes in the adjudication: the process of charging crimes and of implementing punishments. The application of laws in this chapter refers to the narrow meaning of charging crimes or how the jurists applied the law (the Han codes or Manchu law) to make decisions on the nature of the crime. This chapter will mention relevant issues about the application of laws since both leveling charges and implementing punishments were integral parts of adjudication.

My research will focus on cases adjudicated by the Board of Punishment or the Three High Courts because of the limitation of sources. Even though the dissertation focuses on Jingshi, my analyses will begin with the whole China proper with exclusion of the areas ruled by the Southern Ming dynasty (1644-1662). My analyses will exclude fugitive cases, which will be discussed separately.

II. Imposing the Manchu penal system in Qing China (1644-1645)

⁴⁹ The early Shunzhi court made conversion between slashes of whips and blows of bamboo. The complicated historical process reflects the flexibility to adopt the Han juridical principles and its intention to reconcile between Manchu and Han (Hu, 2010b).

When the Qing court took Jingshi, the Qing court initially retained its own penal system. On June 10, 1644, four days after the Qing army entered Jingshi, Prince Regent Dorgon adjudicated the first case and issued the first legal edict. Dorgon's adjudication clearly demonstrated the application of the Manchu penal system. In this case, three bannermen slaughtered a civilian's pig. When the owner intervened, a bannerman shot and injured him. It is unknown who reported this case. Dorgon ordered the bannerman who shot the civilian to be beheaded and the other two bannermen to be punished by one hundred strokes of the whip. He also sentenced the bannermen to perforation of their ears and noses. Dorgon further stipulated that if anyone (bannermen) took any trivial items from commoners, the offender would be slashed with eighty strokes of the whip and be perforated through the ear with shooting arrows (QSL, SZ, vol. 5: 58). In this case, Manchu law guided the adjudication and Dorgon's new edict.

On July 12, 1644, the Qing court even decided to impose the Manchu penal system on the Han people in Jingshi and the provinces. An edict stated that "[I]f each yamen needs to beat criminals, it should follow the original whipping system of this dynasty. It is not permitted to use the heavy bamboo" (QSL, SZ, vol. 5: 61). According to this edict, all criminals, including both Han and Manchus, must obey the Manchu penal system.

Some Han officials naturally opposed such the imposition of the Manchu penal system. On July 21, 1644, Shuntian Inspector (*shuntian xun'an* 顺天巡按) Liu Yindong 柳寅东 suggested that the Qing quickly establish a code because "emperors assist teachings and do not abolish the five punishments." Liu stated that whipping was not enough to admonish the masses, and that "only clear punishment can put the law in order." Dorgon positively responded to Liu's request by saying that "Whipping seems too

generous [for criminals]. From now on, the adjudication is permitted to follow the Ming law” (QSL, SZ, vol. 5: 62-3). This was the first time that the Qing recognized the authority of the Ming law—or the Ming code. According to the Ming code, the jurists should apply the five punishments. However, in practice, the jurists applied the two-degree Manchu penalties instead of the five punishments because of the influence of the Manchu juridical tradition.

Based on records in the *Qing shilu*, contemporary officials sometimes indicated that jurists followed the Ming code, but in more cases, they indirectly criticized the Manchus for not respecting the Han juridical system, especially the penal system. These officials usually suggested the court make a new code as an indirect way of reconstructing the Han juridical system, especially the five punishments. For example, on October 11, 1644, the junior vice-minister of the Board of Punishment (*xingbu you shilang* 刑部右侍郎) Ti Qiao delivered a memorial, which says:

The establishment of the five punishments aimed to expose evils and to remove disorder. The death penalty has two forms: strangulation and decapitation. The Ming code distinguishes them by degrees with strangulation and decapitation being applied respectively. According to the juridical system of our dynasty, decapitation is applied to all criminals who deserve death. I suggest that from now on, for all criminals who receive the death penalty, [the court] distinguish between strangulation and decapitation, make adjudications in accordance with the [Ming] code. As for criminals who are sentenced to beating, their crimes are not severe enough for the death penalty. If one blow of the bamboo equals one stroke of the whip, it may risk people's lives. It should be appropriate to reduce the blows of the bamboo and three strokes of the whip equal one blow of the bamboo. Then it will be fair [between beating with the bamboo and with the whip]. I sincerely request Your Majesty to order the Board I serve [Board of Punishment] to announce [my suggestions] in Jingshi and in the provinces (QSL, SZ, vol. 8: 86).

Clearly, Ti's memorial indicates the dominance of the Manchu penal system and disuse of the five punishments. The Qing court did not differentiate between strangulation and

decapitation, but the Qing court punished Han criminals by beating with the bamboo rather than slashing with the whip. However, according to Ti, a blow of the bamboo was more severe than a stroke of the whip. Converting three slashes of the whip to one blow of the bamboo aimed to balance between the two penalties. Again, the Prince Regent accepted Ti's suggestions. Archives show that no later than the twelfth month of the first Shunzhi reign, the Qing court applied the punishment of strangulation (NGDK, 121311), but not to bannermen.

Other records also show that the jurists did not strictly follow the five punishments. Before July 1645, numerous officials sent memorials to the emperor to suggest that the Qing court restore the five punishments and promulgate a new code. Some of them asked the Qing court to restore the Autumn (Court) Assizes, Summer Assizes, and Temporarily Ceasing Penalties (*linshi tingxing* 临时停刑) (QSL, SZ, vol. 10: 102; vol. 14: 126; vol. 14: 129; vol. 16: 143). These records in the *Qing shilu* indicate that jurists did not fully apply the five punishments in accordance with the Han juridical system. Some officials mentioned the continuation of applying the Ming code, but they hoped that a new code would resolve the issue of application of the five punishments. The application of the five punishments, rather than that of the Ming code (in charging crimes), was the focus of these memorials. All these memorializers applied Han legal principles to persuade the Manchu ruler to accept the Han juridical system. None of these officials mentioned the reason why the Qing court, while publicly permitted to apply the Ming code, still imposed the Manchu penal system on Han.

The last memorial I found arguing for the adoption of the Han penal system was submitted on July 1, 1645, by Yang Fangxing, a Hanjun (Chinese) bannerman who served

as the Governor-general of the Yellow River and the Great Canal. As a Chinese
bannermen who submitted to the Qing regime before 1644, Yang's memorial partly
explains the contradiction between the Han and Manchu penal systems:

If a dynasty is to prosper, it must establish a dynastic code, so that people will know what is prohibited. If a person knows the law but violates it deliberately, [the state] then will apply penalties on him. Even if the violator is sentenced to death, there will be no blame. Our emperor suppresses the violence and removes the atrocity. Especially, at the early stage after the dynastic transition, the code must be settled. [The punishment of] Our Qing law⁵⁰ is either killing or beating. Because of the pure and honest [customs] of the eastern land [Manchuria], the people's minds are plain, penalties are clear, and policies are simple. Now the middle [China] and the outer are one union. For people from five directions, the customs are not uniform. How can [other peoples] be as pure, honest, and simple as the people in the [pre-1644] Qing dynasty? [The law] should be made in accordance with [different] customs and be applied in accordance with [different] peoples. If [the punishment] for heavy crime is killing, and for light crime is beating, it seems that between them [killing and beating], killing is too heavy and beating is too light [for some crimes]. Examining the [Ming] code, there are [punishments of] beating with the light bamboo, beating with the heavy bamboo, penal servitude, and exile. Now the code is not settled, the jurists have nothing to follow, the degrees [of the punishments] are not appropriate, and little commoners also do not know how to behave (*shouzu wucuo* 手足无措). I think the law does not suffer from not being severe, but suffers from not being clear. From ancient time, the period when the rule was fair, the law was clear and persons who violated the law were few. Even at the beginning of the Ming, was the law not good? By the end of the Ming, it was the supposed law-followers, not the law itself, who were not good. I humbly ask Your Majesty to consider [the situations] and calculate, adopt both Qing and Han [laws], and make a unified system as soon as possible, so that [the law] can last to one thousand generations. (NGDK, 185040)

The Prince Regent replied very breezily that “there have been several edicts in terms of making the code. Please wait until the day when the code is ready to be promulgated.

Have the [relevant] yamens know [this memorial]” (NGDK, 185040). Yang's memorial clearly points out the problem between the Manchu and Han penal systems. That is, the simple “Qing” [Manchu] juridical system could not be applied in China. The five punishments in the Ming code was a standard that the new Qing ruler must follow for the

⁵⁰ It referred to Manchu law.

longevity of the dynasty. Like other officials, he suggested making a new code to resolve the problem of the Manchu penal system. Yang, in an indirect way, suggested that the Ming code is good, and that the new code shall draw on both Manchu and Han legal principles. As far as I know, this was the last memorial to suggest that the ruler adopt the five punishments.

Multiple factors contributed to the reasons why no further officials suggested adopting the system of the five punishments. In the first place, the Prince Regent promised many times to make a new code as soon as possible. Second, the Qing court gradually reinstated the five punishments in the provinces. Lastly, in Jingshi where the court did not restore the Han penal system until 1653, it was understandable that officials kept silent because bannermen lived there. Reinstating the five punishments in Jingshi meant to place bannermen under the Han penal system.

The reinstatement of the five punishments in the provinces can be supported by the promulgation of the *Daqinglü fu* in 1645 and archival case records. The promulgation of the *Daqinglü fu* was an official adaptation of the Ming law. Most articles in the *Daqinglü fu* deal with capital cases, but some deal with cases punishable by military exile. Archival cases also demonstrate that the Qing court gradually reinstated the Ming penal system in the provinces.

Among cases I read, the first case in which the jurists applied the punishment of penal servitude occurred before Yang's memorial. This is a piece of evidence to show the reinstatement of the five punishments. On July 5, 1645, the Board of Punishment memorialized a case to the emperor. Before this memorial, the emperor already approved the Board of Punishment's sentencing. In this case, some yamen runners committed

offenses, and the governor of Baoding sent the case to the Board of Punishment for review. The memorial did not tell the sentences proposed by the Baoding governor, but it is reasonable to assume that the Board of Punishment just approved the governor's adjudication. The Board of Punishment sentenced these criminals to penal servitude. The memorial did not tell us how many years of penal servitude they received. The jurists mentioned that that the sentencing followed the code but did not cite any article of any code (NGDK, 185040).

This was the first case, as far as I found, in which the jurists applied the punishment of penal servitude. Because it required some time to transfer the documents, the review of the Board of Punishment and the preliminary sentences in the province must have occurred weeks or months earlier than the day of July 5, 1645. This case demonstrates that at least the Board of Punishment applied penal servitude.

Other cases also show that after July 1645, the court applied the five punishments in the provinces. For example, in a case memorialized on July 19, 1645, the governor of Denglai 登萊巡撫 sentenced a Han officer to service in the frontier according to the substature of military officers committing an offense punishable by penal servitude.⁵¹ The governor asked for review, and the emperor, as was routine, forwarded the case to the Board of Punishment for review (NGDK, 185040). In this case, the provincial jurists applied the Han penal system of the five punishments.

For capital cases, as mentioned in the previous chapter, the Qing court also adopted the death penalty after the assizes in the provinces. It is worth noting that the reinstatement of Han penal system was a gradual process. Because many areas of China were still at war,

⁵¹ The jurists just mentioned the name of the crime. The Ming code's description is different (DMLF, vol. 1: 24b – 25a). The jurists obviously applied the Ming code in a very coarse way.

the punishment of exile could hardly be implemented. As some cases show, the court reduced the punishment of exile to that of penal servitude (NGDK, 117645).

In summary, before July 1645, the Qing dynasty imposed the Manchu two-degree penal system in both Jingshi and the provinces. At the very beginning, the Qing court even imposed whipping on Han. Due to the tremendous opposition from numerous officials, the Qing court gradually reinstated the Han penal system of the five punishments in the provinces no later than July 1645. In Jingshi, the story was very different.

III. The Penal Systems in Qing Jingshi (1644-1656)

The Qing court applied a very different penal system in Jingshi from 1644 to 1656, and the system was full of changes. Before 1653, the Manchu penal system predominated the penal system in Jingshi. Criminals mainly received two degrees of punishments, death and whipping (beating with the bamboo for civilians). The punishment one degree less severe than death was one hundred strokes of the whip for bannermen or one hundred blow of the heavy bamboo for civilians. From 1653 to 1656, the court punished civilians according to the Han penal system. The court usually adjudicated bannermen in accordance with the Qing code but exempted bannermen from banishment when they received punishments of penal servitude and exile because of their bannerman status. After 1656, though some articles of Manchu law and punishments were still in active use among bannermen, the principal law that stipulated bannermen was the Qing code, and bannermen were also, at least nominally, under Han penal system of the five punishments.

The above, of course, is an overall observation. Before 1653, even though both Han and Manchus were under the system of two degree punishments, ethnic division was also very clear. Manchus received just two degree punishments due to their own juridical tradition. For the Han people, it was because that the Qing court did not implement the punishments of penal servitude and exile. This section will delineate the penal system in Qing Jingshi, and it will analyze how civilians and bannermen were punished respectively.

A. Civilians

Under the dominance of the Manchu penal system, civilians received either death or beating with the bamboo from 1644 to 1653, but the Han penal system nevertheless showed stronger influence on the punishment of civilians than that of bannermen. One example, as mentioned above, is the implementation of beating with the bamboo canes. Another example is the degree of death punishment. The Qing court applied decapitation and strangulation in the provinces, and no later than the last month of the first year of the Shunzhi reign, the court applied both to civilians in Jingshi. Archival cases however show that the court occasionally implemented the punishment of strangulation (e.g. NGTB, 1834-20). As the case of Huang San in Chapter Three shows, the Qing court did not apply the Qing code strictly, so it was highly possible that the court sentenced a civilian who just deserved strangulation to decapitation. This two-degree penal system did not experience any fundamental changes until 1653.

In 1653, the Qing throne reinstated the Han penal system in Jingshi among civilians. This restoration was accompanied with the more strict application of the Qing code in charging crimes, a point I will delineate in the next chapter. Both penal servitude

and exile, as far as I know, emerged in Jingshi cases in March 1653. The earliest case in which the court applied penal servitude was memorialized on March 7, 1653. Unusually, the emperor ordered all the censors of the Five Wards to jointly adjudicate a case where Song Shier 宋十二, a civilian from Zhejiang province, intimidated and obtained money from several clerks and officials. The censors sentenced Song Shier to three years of penal servitude plus one hundred blows of the heavy bamboo according to the statute of using intimidation to obtain property. The censors then memorialized the sentences to the emperor on March 7, 1653, and the emperor ordered the Three High Courts to review this case (NGDK, 119274).

An exile case happened almost at the same time period. Li Chengxiang 李呈祥, the junior supervisor of the Heir Apparent (*zhanshifu shaozhan* 詹事府少詹), received a death penalty. The Qing court convicted Li because he advised the emperor to appoint Han officials and to dismiss Manchu officials in the six boards and other important institutions. The emperor exempted his death penalty but still exiled him to Shengjing on March 17, 1653 (QSL, SZ, vol. 72: 570, 572). Other cases also show that the Qing court reinstated penal servitude and exile in Jingshi among civilians in 1653 (e.g. NGTB, 1866-13; NGDK, 119668). In other words, civilians in all under the Heaven were mainly under the Han penal system from 1653.

B. Bannermen

The Qing court continued applying the Manchu penal system among bannermen before 1656, and bannermen's main punishments usually referred to death and whipping.

Before 1653, by following the Manchu penal system, bannermen who sentenced to death were decapitated.

Among archival cases I have read, no bannerman was sentenced to strangulation before 1653. This phenomenon can also be verified by Liu Yuyou's 劉餘祐 memorial delivered on June 2, 1652. Liu was a president of the Board of Punishment. He frankly pointed out six "matters" that violated Han juridical principles. In order to uphold the authority of the Qing code, as Liu argued, the Qing court must rectify these six "matters." The first was that the Qing court did not distinguish strangulation from decapitation. As he stated, "now those who deserve death penalty, even though they have committed crimes punishable by strangulation, are also punished with decapitation." Liu argued that this practice was problematic because decapitation was more severe than strangulation, and he suggested executing criminals in accordance with the code (NGDK, 006582; MQDA, A014-094). Liu's memorial just mentioned the phenomenon that some criminals who deserved strangulation received decapitation. Cases show that the Qing court did apply strangulation among civilians, and as the president of the Board of Punishment, Liu was supposed to know this regular practice. The only explanation of Liu's description is that the Qing court did not apply strangulation among bannermen. Liu's other suggestions in this memorial related to the Manchu legal traditions imposed on both Han and Manchus. Liu Yuyou criticized this practice probably not because the Qing court did not apply strangulation among bannermen, but because the court decapitated many Han criminals in Jingshi who deserved only strangulation.

The Qing court did not apply strangulation among bannermen until 1653. The emperor ordered the "relevant yamens" to discuss Liu's suggestions. As far as I read,

before 1653, no bannermen were sentenced to strangulation. The earliest case I found happened on May 19, 1653, when the Qing court resumed strangulation after the assizes in Jingshi. The jurists sentenced several bannermen to strangulation after the assizes. The case of Zhang Xue discussed in Chapter Three was one of them. But the Qing court continued punishing bannermen by death (including both strangulation and decapitation) or slashing with whips.

The dramatic change in the application of laws in 1653 affected the implementation of punishments in Jingshi. That is, the Qing court began to strictly apply the Qing code among bannermen. The court sentenced bannermen to penal servitude or exile in accordance with the Qing code but exempted them from banishment. Such a practice made bannermen be punished very lightly if they committed crimes punishable by exile or penal servitude. The Board clearly stated that all persons under the banner system were exempted from banishment even though the Board could sentence them to exile in accordance with the code (NGDK, 088750). All persons under the banner system, including slaves, were punished this way. Here is one example.

In 1655, a villager Gao Shangdong 高尚东 went to Jingshi to sell his cloth. A low status bannerman Liu Si 刘四 took a knife from another bannerman Yihata 宜哈塔. Liu Si asked Gao Shangdong to go to his house. Liu then killed Gao and took Gao's cloth. Yihata saw Liu Si kill Gao but neither stopped Liu from killing nor reported the case to the court. When Liu Si was burying Gao Shangdong, his master saw it and reported the case to the banner system. This case was then sent to the Board of Punishment who sentenced Liu Si to decapitation after the assizes in accordance with the statute of "stealing and killing persons" (DQLJJ, vol. 18, 306). Yihata, as an accessory, was

sentenced to one hundred blows of the heavy bamboo and exile of 3,000 *li*, one degree less severe than the punishment to which Liu Si was sentenced. The Board stated “Yihata is a Manchu houseman. His punishment of exile will be exempted and [his punishment of 100 blows of the heavy bamboo] will be punished by one hundred strokes of the whip.” The Board of Punishment memorialized its adjudication to the emperor on November 6, 1655. The emperor, as was routine, ordered the Three High Courts to review. The Three High Courts confirmed the adjudication and memorialized it to the emperor on January 6, 1656. The emperor approved the adjudication (NGTB, 1903-4).

The jurists sentenced Yihata to exile in accordance with the Qing code, but because he was a Manchu houseman or a slave, the jurists exempted him from exile. Yihata received only one hundred strokes of the whip — one degree less severe than death according to the Manchu penal system. The punishment was really light. The reason lay in that the Qing court punished Bannermen not by the five punishments before 1656. Because the Qing court punished bannermen in accordance with the Manchu penal system and leveled the charges in accordance with the Qing code, the process of charging crimes and that of implementing punishment were disjointed.

Another problem caused by the disjointedness was the reduction of penalties. According to the Manchu penal system, one hundred stroke of the whip was one degree less severe than death. If a bannerman was sentenced to death in accordance with the Qing code and the Qing court decided to reduce his punishment for any reason, he would receive one hundred strokes of the whip as a reduction of the death penalty. The court never considered exile and penal servitude. For example, a slave Li Mazi 李麻子 accused his female master, who was a banner woman, of having sex with a Taoist priest.

The accusation was false, but Li's female master and the Daoist priest did sleep in one room. The Board of Punishment stated that Li Mazi should have been sentenced to strangulation after the assizes in accordance with the Qing code, because a slave was prohibited from falsely charging his master. However, because Li Mazi's female master slept in the same room with the Taoist priest, Li Mazi should be sentenced to one hundred strokes of the whip—a punishment one degree less severe than death. The Board of Punishment memorialized its sentence to the emperor on October 12, 1653. Three days later, the emperor ordered the Three High Courts to review this case. During the review, the Grand Court of Revision supported the Board of Punishment's sentencing while the Censorate suggested the penalty of strangulation after the assizes. The Three High Courts memorialized their differently recommended sentences to the emperor on February 8, 1654. The emperor approved the Board of Punishment's sentencing, and Li was punished by one hundred lashes with the whip (NGTB, 1869-9).

In sum, before 1656, the Qing court basically applied the Manchu penal system to bannermen. Even though from 1653 to 1656, the Qing reinstated strangulation among bannermen and sentenced many bannermen to exile and penal servitude in accordance with the Qing code, the court still punished bannermen by either death or lashing with the whip. Therefore, in many cases involving bannermen, the application of law and the implementation of punishments were disjointed.

IV. The prototype of the Statute of “Committing Crimes and Avoiding Banishment”

On July 24 1656, the Qing court built a bridge to link the divergence between the application of law and the implementation of punishments. The bridge is that if a bannerman was sentenced to penal servitude, exile, or military exile, he must wear the cangue while his punishment of whipping was still implemented. Bannermen who committed crimes punishable by military exile must wear the cangue for three months; by exile, two months; by penal servitude, one month. Besides wearing the cangue, they still received whipping. The number of strokes of the whip was the nominal number of the blows of the bamboo as the Qing code stipulated. The Board of Punishment proposed this regulation, because it believed that illicit or treacherous persons (bannermen) did not receive [deserved] punishment if they committed crimes punishable by military exile, exile, or penal servitude. The Board also suggested changing three other articles of the law in order to punish bannermen more severely. The emperor approved all the Board’s suggestions and made them statutes forever (QSL, SZ, vol. 102: 786-7).

This regulation made both bannermen and civilians subject, actually or nominally, to the Han penal system. This regulation was the prototype of the statute of “committing crimes and avoiding banishment.” It experienced some changes and became a statute of the Qing code in 1725 (DC, 009.00). This statute was a strong piece of evidence that showed the legal inequality between Manchu and Han. Many scholars cited this statute to support their arguments that Manchus were different from the Han people (e.g. Elliott, 2001: 200; Rhoads, 2000: 42-3).

Scholars generally ascribed this regulation to the facts that bannermen were soldiers or officers, and to the fact that the Qing court needed soldiers. For example, by following a record in the *Qingshi gao*, Mark Elliott argues that the bannermen's legal privilege of commutation aimed to maintain national security because bannermen were soldiers (Elliott, 2001: 200). Legal historian Lin Qian 林乾 upholds the same argument by drawing upon various sources from the *Qing shilu*, the *Qingshi gao*, records written by Yinghe 英和, Xue Yunsheng 薛允升, and Shen Jiaben 沈家本 (Lin, 2004: 39-40). Su Qin (1992) has incisively noticed that this regulation was a major step to reconcile between Manchu and Han penal systems, and that this was a major step to implement the Qing code. However, by drawing upon Shen Jiaben's explanation, Su also argues that this regulation aimed to retain allegiance of soldiers.

The *Qingshi gao* in many ways is not a trustworthy history. Its compilers were Qing loyalists who obviously tried to provide a reasonable explanation of bannermen's legal privileges. Unfortunately, in this respect, the *Qingshi gao* is not the only source that argues the statute of "committing crimes and avoiding banishment" aimed to ensure the national security. Other sources cited by Lin are all from the late Qing or the early Republic period when recorders, including famous official-scholars like Xue Yunsheng and Shen Jiaben, actually did not know what exactly happened during the Shunzhi period. Also, Shen's memorial, like the description in the *Qingshi gao*, intended to give an explanation to legitimize what the Qing court practiced. Lin neglects the most important information in the *Qing shilu*: the Board of Punishment clearly stated that the commutation aimed to have bannermen punished more severely than nothing.

I do not gainsay that this statute was an expression of the legal inequality between Manchu and Han, or that this statute did ensure the national security to some (limited) extent. I am arguing that the intention of this statute aimed to punish bannermen more severely, and to punish them, at least nominally, in accordance with the five punishments in the Qing code. Most previous scholars do not know the practice before 1656. The penal system applied to bannermen before 1656 already had the function to retain banner soldiers. If retaining soldiers had been the intention of the legislation, the best and simplest way would have been to retain the original Manchu penal system. Furthermore, many low status bannermen, such as slaves and servants, also enjoyed this privilege, but many of them usually did not serve as soldiers at all.

Considering that wearing the cangue was a much less severe punishment than military exile, exile, and penal servitude, the commutation was really a legal privilege for bannermen. This privilege was a necessary compromise to recognize the authority of the Han penal system. Even though Manchus or bannermen were only nominally punished by the five punishments, the commutation directly admitted the orthodoxy of the Han penal system in the Qing code. The disappearance of various other Manchu penalties further proved that the Qing adopted Han penal system.

V. The Abolishment of Various Manchu penalties

Besides death and whipping, there are other various penalties under the Manchu penal system. There often penalties gradually fell into disuse or the court abolished them outright. The *Qingshi gao* correctly points out that the Qing court quickly abolished most

Manchu penalties during the Shunzhi reign.⁵² However, some continued to be applied until the Kangxi reign, and some were even once added to the Qing code. The description in the *Qingshi gao* does not consider the conflicts between Manchu and Han officials over these penalties. This section will describe the application and disappearance of these Manchu penalties and the Manchu-Han conflict over these penalties.

Perforating the ear or the nose with arrows

One hundred strokes of the whip plus perforation of the ear and the nose was one degree less severe punishment than the death penalty under the Manchu penal system. We have already seen one example of this (the case memorialized on June 10, 1644). In another case happened from 1645, an imperial guard received this punishment. The Prince Regent pardoned him (QSL, SZ, vol. 20: 179). These are two examples that the court applied the punishment of perforating the ear and the nose. Based on the sparsity of Qing records, the Qing court did not implement this punishment so often.

The Qing ruling house quickly abolished this penalty. On May 26, 1646, the Board of Punishment memorialized that the criminal who received a reduction from the death penalty was punished by one hundred strokes of the whip with perforation of the ear and the nose. The emperor replied that “[E]ar and nose are on human bodies and they are most evident. The punishment of perforating the ear and the nose is abolished forever” (QSL, SZ, vol. 25: 215). The abolishment of this punishment made one hundred strokes of the whip the punishment one degree less severe than death.

⁵² The *Qingshi gao* states, “As for ‘compensating persons’ (*peiren* 赔人) for mistaken and accidental killings, hamstringing for theft, perforating the ear and the nose as a reduction of the death penalty, confiscating family properties from bandits, corrupt officials, and those who harbored fugitives, they were either from the *Shengjing dingli*, or severe precedents sporadically implemented during the Shunzhi reign. They were abolished in a short time” (QSG, vol. 143: 4198).

Hamstringing

The Qing court applied the punishment of hamstringing in a fugitive case. Bannerman Erhaizi escaped. A bannerman found Erhaizi and reported the case to the court. The Board of Punishment sentenced the person who hid Erhaizi to death and Erhaizi to fifty strokes of the whip with hamstringing of both feet. The Prince Regent approved the sentences on January 6, 1645 (NGDK, 185037). This Qing court applied this punishment very infrequently. In 1645, the Qing court abolished hamstringing in response to the Secretary of Office of Scrutiny for Justice Li Shikun's request (QSL, SZ, vol. 18: 163).

In 1713, the Qing court reinstated hamstringing for theft cases in Jingshi and certain places like Rehe 热河 (YZHD, vol. 172: 11287-8). But in 1724, the Qing court abolished it again (YZHD, vol. 172: 11288; QSL, YZ, vol. 29: 430). The reinstatement was limited to certain areas and very short-lived.⁵³

Fining *tuhere weile*

Different from corporal punishments applied to commoner bannermen, fining *tuhere weile* was applied to Manchu hereditary officials and nobles up until the Kangxi reign. As mentioned above, this punishment allowed Manchu officials and nobles to commute their corporal punishments, similar to fining salary for Han officials.

The Qing court widely applied the penalty of fining *tuhere weile* to Manchu officials and nobles during the Shunzhi period. For example, in a case memorialized on November 14, 1652, officials at the Board of Punishment committed offenses because of translation mistakes or because of failing to find the translation mistakes. The president of

⁵³ Besides these two corporal penalties, there was also another one, whipping plus taking the criminal's flesh. As one case shows, this penalty might be applied among commoner bannermen (NGTB, 1834-3). This punishment did not show up in other cases. It probably was abolished very quickly.

the Board of Punishment Liu Yuyou and other Han officials received a fine of one month's salary for their carelessness; the banner *qixinlang* (translator) Li Tianyu received a fine of two *tuhere weile* for his mistaken translation. The other two *qixinlang* received one *tuhere weile* for failing to find Li Tianyu's mistakes (NGDK, 120505).

The application of the *tuhere weile* fining meant that Manchus received different punishments from the Han officials for the same offenses. Xu Kai (1985: 195) points out that before 1644, Han officials opposed such a punishment and advocated to punish Manchu officials and nobles in accordance with the Ming law. Zheng Tianting (1980: 140) points out that the Qing court established unified regulations to punish both Manchu and Han officials and nobles in 1671, and that the Qing court abolished this punishment.

The Qing court implemented all above punishments among bannermen but eventually abolished them. These Manchu punishments thus did not cause any serious social problem for the Han people. In addition to these punishments, the Qing dynasty imposed several penalties on both Han and Manchu. They mainly involved to “compensating persons” and confiscating properties.

“Compensating persons”

For certain offenses, the punishment could be “compensating persons” or *peiren* whereby the criminal must forfeit his subordinates or family members (retainers, slaves, servants, wives, children, etc.) to the victim or to the state. The forfeited person usually became a slave.

This punishment was a Manchu law before 1644. After 1644, the Qing court even extended it to the Han population. For example, in a case memorialized on August 21, 1648, civilian Li Cheng 李成 beat a banner woman to death. The Board of Punishment,

without citing any law, sentenced Li Cheng to immediate decapitation plus giving Li Cheng's wife to the banner woman's master. The emperor approved the sentences by saying "Li Cheng is going to be decapitated and other [sentences will be implemented] as recommended" (NGDK, 117493). Because Li Cheng killed a banner woman, not only was he himself sentenced to death, but also his wife was given to the banner woman's master as compensation.

This case shows that the Qing ruler imposed its Manchu penalties on the Han. Such cases usually happened in places where bannermen and civilians had contact with each other. Therefore, such kind of application of Manchu penalties among civilians was constrained since most Han people did not have any chance to contact with any bannermen.

What Han officials opposed was the Qing court adding some Manchu punishments to the Qing code, or upgrading them to a status similar to the statute or statute for some specific crimes. Inserting Manchu law into the Qing code caused inconsistencies with the Qing code. Post-conquest Manchu law existed in practice, brought from their original tribal laws, and only later became codified with their inclusion in the Qing code. Traditional Han understandings of law were based on the concept of the "equality of law" whereby punishments were commensurate with the crime. Manchu prescribed punishments violated this internalized understanding and led to inconsistencies within the larger theoretical basis of the law.

The punishment of "compensating persons" was applied to all under Heaven after 1648 when a special regulation of "compensating persons" for mistaken killing (*wusha* 误杀) was issued by the Prince Regent. This regulation later was added to the Qing code (Su,

2000: 148-9) in accordance to the Prince Regent's opinion of a capital case. In that case, civilian Zhu Heshang beat a person to death. The whole bureaucracy, from the county, prefect, circuit, province, to the Three High Courts, recommended a death penalty. However, the Prince Regent Dorgon disagreed and sentenced⁵⁴ in accordance with what would become statute that stated: "[A]nyone who, because of being in an affray, by mistake injures (*wushang* 误伤) another and the latter dies from the injuries, will be sentenced to beating with forty (actual) blows of the heavy bamboo and have to forfeit a person (wife, children, retainer, etc.) in compensation for the loss of life. If anyone who, because of always having hatred toward a person, and kills the person in an affray, will be sentenced in accordance with the original statute, and [the jurist] should ask the emperor for final sentence" (KXHD, vol. 120: 5999).

Su Yigong argues that while Dorgon's sentence violated the Qing code, it was in accordance with the Manchu customary law (Su, 2000: 122). Su correctly signifies that Dorgon did not baselessly sentence this case. After careful examination of both the Qing code and Manchu law, however, Dorgon's sentence might violate both if Dorgon's special status as the actual ruler was not taken into account.⁵⁵

This 1648 regulation endorsed by Dorgon is different from the statute in the Qing code. The Qing code clearly stipulated that anyone who injures another person in an affray and the person died due to the injury will be sentenced to strangulation after the assizes;

⁵⁴ Dorgon's sentences: Zhu Heshang will just (*gu* 姑) be beaten with 40 [actual] blows of the heavy bamboo. [Zhu is also required to] give one person as compensation. After the adjudication, Dorgon decided that his sentence became a substature (cited in Zhou and Zhao, 1986: 329). This substature was added to the *Daqinglü jijie fuli* (the first edition Qing code) and could also be found in the Kangxi *Daqing huidian*.

⁵⁵ The emperor had the power to revise any law, and it was a legitimate way to make the emperor's words the law. Dorgon did not have the name of the emperor, but he was the actual ruler.

anyone who killed someone intentionally would be punished with decapitation after the assizes (DQLJJ, vol. 19: 327). The 1648 regulation proposed by Dorgon differentiated those who killed a person in an affray with intention from those without the intention of killing. According to the Qing code, this differentiation is unnecessary because killing in an affray actually refers to mistaken killing or the killing without an intention.

There are subtle differentiations among different killings in the Qing code. The 1648 statute concerns two different killings. One is mistaken killing or *wusha*, the other accidental killing (*guoshisha* 过失杀). But the mistaken killing in the Qing code is different from the regulation proposed by Dorgon. It refers to killing a bystander by mistake and the criminal will be sentenced to strangulation after the assizes on the basis of killing in an affray. Accidental killing refers to a killing of which the killer remains unaware, or which the killer does not contemplate. For example, when one is shooting wild animals and he kills someone by accident, such a killing is an accidental killing. Accidental killing is also sentenced on the basis of killing in an affray, but redemption is allowed, and the money will be given to the victim's family (DQLJJ, vol. 19: 328-9).

The *Shengjing dingli* also has an article for accidental killing that states “[E]veryone who accidentally injures or kills someone will be sentenced with one hundred strokes of the whip plus compensation of giving one person [to the victim's family]” (QSL, KX, vol. 11: 174). The punishment of this new regulation, forty actual blows of bamboo and compensation of giving one person, is the same as that of accidental killing in the *Shengjing dingli*. The Kangxi *huidian* lists this new regulation of mistaken killing, the article at the *Shengjing dingli*, and other statutes of accidental killing together (KXHD, vol. 120: 5999). The meaning of accidental killing in the *Shengjing dingli* might be

different from the accidental killing but be similar to the killing in affray in the Qing code. If this was true, the Prince Regent simply applied the *Shengjing dingli* to the Han people. The Prince Regent might have misunderstood the article in the *Shengjing dingli* if the meaning of accidental killing in the *Shengjing dingli* was the same as that in the Qing code.

The problem is that Dorgon imposed a Manchu punishment on the Han people. The punishment of forty blows of bamboo plus compensating one person obviously targeted on civilians or Han. If the target was Manchus or bannermen, it would say one hundred strokes of the whip. For the Han officials, mistaken killing should be sentenced on the basis of killing in an affray. In the memorials delivered on June 2, 1652, the president of the Board of Punishment, Liu Yuyou, also opposed this regulation. Liu argued that the code had articles for mistaken killing, and the punishment was death. He criticized that the punishment of “compensating persons” was not fair and would indulge the evil. Liu suggested that the emperor stop implementing the punishment of “compensating persons” for mistaken killing (NGDK, 006582; MQDA, A014-094). The emperor ordered relevant yamens to discuss Liu’s suggestions. I do not find any source to tell the outcome of the discussion.

Among cases I read, the Qing court did not apply his regulation so often. The court gradually abolished the 1648 regulation and the punishment of enslavement for crimes of killing in general. The Qing court established a regulation for accidental killing in 1664. According to the regulation, bannermen would still be punished by one hundred strokes of the whip and giving one person to the victim’s family in accordance with the *Shengjing*

dingli; civilians would also be punished by forty actual blows of the heavy bamboo and giving forty taels to the victim's family (KXHD, vol. 120: 5999; QSL, KX, vol. 11: 174).

In 1665, it was further ruled that if a person had killed someone during an affray and he was exempted from death penalty when there was an amnesty, he would be sentenced to giving forty taels to the victim's family; if he did not have that much money and he was willing to be a slave of the victim's family, he himself should be given to the victim's family as a slave (KXHD, vol. 120: 5999-6000). This precedent indicates that the regulation proposed by Dorgon had been abolished by 1665.⁵⁶ Compensation or enslavement of the criminal himself was still a choice if he was exempted from death and could not pay the forty taels.

In 1668, the Qing court fully abolished the article in the *Shengjing dingli* for accidental killing. The new regulation stated that anyone who had accidentally injured or killed someone, he should not be punished by "compensating persons" plus paying taels to the victim's family; he instead should be solely punished by paying taels to the victim's family (KXHD, vol. 120: 6000). In 1671, the Qing court also fully abolished compensation or enslavement in the 1665 precedent. The new precedent stipulated that if a person who had killed someone during an affray and he was exempted from death when there was an amnesty, he should be punished by paying twenty taels to the victim's family (KXHD, vol. 120: 6000).

In sum, during the early Kangxi period, the Qing court abolished various precedents concerning the punishment of "compensating persons." Very interestingly,

⁵⁶In a Kangxi edition *Daqinglü jijie fuli*, the Prince Regent's edict was removed.

such changes mainly happened during the Oboi Regency when the Qing court in many ways reinstated the Manchu traditions.

Confiscation

Besides “compensating persons” for mistaken killings, the Qing court also imposed another punishment — confiscation (*jimo* 籍沒) — on both Manchus and Han. The court widely applied this punishment to bannermen, either before or after 1644. Admittedly, confiscation was nothing new for the Han people too, and it existed in Ming China. According to the Ming legal system, such a punishment was usually applied for crimes like treason or rebellion. The problem is that the Qing court implemented confiscation for certain specific crimes, among which the punishment should not have been applied based on the Ming or Qing codes.

The Qing court widely applied confiscation to the Han people in 1644 and the first half of 1645. For example, on June 11, 1645, the Secretary of Office of Scrutiny for Justice Sun Xiang memorialized that the practice that confiscating or enslaving criminals' family members damaged the women's sense of honor and dimmed the virtue. Sun suggested confining the application of confiscation to the crimes of treason and banditry (*qiangdao* 強盜). The Prince Regent agreed to Sun's suggestion (QSL, SZ, vol. 16: 146). Actually, the Qing court also applied confiscation to the Han people for the crime of hiding escapees, which will be discussed in the next chapter. Here I will analyze the crime of banditry.

The Qing court confiscated all of a bandit's property including wives and children. In a case memorialized on March 2, 1645, three criminals robbed some money and killed one person in Jingshi. Both the criminals and victims were civilians. The three criminals

received a punishment of decapitation in accordance with the statute that “in a case in which theft with force/forcible robbery has been committed and property is obtained, all [offenders] will be decapitated.” The statute was obviously from the Ming code (DMLF, vol. 18, 649). The Board of Punishment also sentenced to confiscate/enslave the three criminals’ wives. The court executed the three criminals ten days before the Board delivered this memorial. The Prince Regent approved the sentences (NGDK, 087528).

This sentence did not mention anything about the property. In a case memorialized on October 2, 1648, a civilian Fan Er 范二 and others robbed and killed Yu Cai 于才, who was a overseer under the banner system. Only Fan Er was caught. The Board of Punishment sentenced Fan Er to decapitation without citing any law. Fan Er’s entire family properties including his wives and children were confiscated and were given to Yu Cai’s master. The Prince Regent approved this sentence by saying “Fan Er is to be decapitated, and other [judgments] will be implemented as recommended” (NGDK, 089435).

This sentence confiscated the civilian criminal’s entire properties and gave them to a bannerman victim. In a case where several civilians and low status bannermen (housemen) committed crimes together, the confiscation had different formats. This case happened in Gu’an county (固安县), Shuntian prefecture. Some bannermen and civilians robbed some other civilians and bannermen. They killed some civilians and injured some bannermen during the robberies. Because it was a case involved bannermen and civilians, it became an immediate examining case adjudicated by the Board of Punishment. The Board sentenced these criminals to decapitation without citing any law. With careful examination, we know that the statute that “in a case in which theft with force/forcible

robbery has been committed and property is obtained, all will be decapitated” would have been applied if the Board had cited the Qing code; so would the previous case. The sentence required to confiscate the civilian criminals’ whole family property including their wives and children. The low status bannermen’s wives and children, as well as other property that they bought themselves, were also confiscated. Considering these bannermen did not have independent status, their other property, such as land and house, would still be kept by their masters. Their confiscated properties were firstly given to the victims’ families. The surpluses after the compensation to the victims were going differently. While the civilian criminals’ surplus properties were taken by the state, the banner criminals’ surplus properties were distributed by their banner commanders. The Board of Punishment memorialized the case to the emperor on March 15, 1651. The emperor approved the sentence by saying that “the seven persons including Yang Da, etcetera, will be decapitated immediately. All others will be implemented as recommended” (NGDK, 085414).

These three cases may tell us the usual way of confiscation. If a bandit had an independent status, his whole properties must be confiscated. If the bandit did not have a independent status, this was the case for many low status bannermen, his houses and land should not be confiscated since these properties belonged to his master; his wives and children *and* other self-owned properties must be confiscated. The victim had the priority to take the confiscated property for his loss; the surplus from civilian bandits would be taken by the state, and that from bannermen would be taken by the banner system.

Such an imposition of confiscation on the Han people was opposed by many Han officials. According to the Qing code, only criminals who commit crimes like treason can

be punished by confiscation. Obviously, the Qing court imposed confiscation on Han in a Manchu way. The president of the Board of Punishment Liu Yuyou, on his memorial delivered on June 2, 1652, suggested the court should stop applying the punishment of confiscation for banditry. Liu emphasized that the Qing code did not have the regulation of confiscation for banditry. As cases show, the Qing court did not adopt Liu's suggestion and confiscation was still applied to bandits (ex, NGDK, 088280). The Han criminals' whole family properties including their wives and children continued to be confiscated/enslaved.

Again, the year of 1653 served as a turning point. The Qing ruling house finally abolished confiscation for banditry. The abolishment nevertheless did not come easily. On March 9, 1653, Liu Yumo 刘余谟, the Secretary of Office of Scrutiny for Rite (*like jishizhong* 礼科给事中), asked the emperor to abolish the Manchu way of confiscation (*manzhou jimo zhi fa* 满洲籍没之法) because according to the Qing code, only severe criminals who committed crimes like treason could be punished with confiscation. Again, the emperor, as was routine, ordered the relevant yamens to discuss Liu's suggestion (QSL, SZ, vol. 72: 570).

The Qing court did not adopt Liu Yumo's suggestion. One case memorialized on April 13, 1653 shows that the court still confiscated criminals' properties (NGDK, 005566; MQDA, A016-14). On June 2, 1653, the senior Chief Censor Jin Zhijun 金之俊 suggested that the emperor abolish confiscation for banditry and apply the confiscation in accordance with the Qing code. The emperor also ordered the relevant yamens to discuss the suggestion on the basis of the Qing code (QSL, SZ, vol. 75: 590).

This is the last time that Han officials suggested that the emperor abolish confiscation for the crime of banditry. The lack of further suggestions indicates that the Qing court finally adopted these Han officials' suggestion. A record in 1653 demonstrates this indication. The record states "bandits only return the original illicit goods (*zhengzang* 正贓) to the owner (the victim). If the offender has injured someone and robbed the person's goods, he will compensate his family property to the victim. His other family properties are exempted from being confiscated to the state" (GXHDSL, vol. 785: 607).

The abolition can also be verified by Wei Guan's memorial delivered on March 14, 1654. Wei was the junior deputy-president of the Board of War. He suggested that confiscation be abolished among cases of harboring fugitives by arguing that confiscation could only be applied for crimes like treason and rebellion, and that "now there is no regulation of confiscation for banditry" (QSL, SZ, vol. 80: 633).

Archival cases also show that confiscation for banditry had been abolished by 1653. In a case first memorialized by the Board of Punishment on October 13, 1653, several low status banner men robbed some persons of property. The Board sentenced them to decapitation in accordance with the statute that "in a case in which theft with force/forcible robbery has been committed and property is obtained, do not distinguish between the principal and accessory. All will be decapitated" (DQLJJ, vol. 18: 306). The criminals only needed to repay what the victim lost. There was no confiscation. The emperor ordered the Three High Courts to review the case. Both the Censorate and the Grand Court of Revision agreed on the Board of Punishment's sentence. The Three High Courts memorialized their sentence to the emperor and the emperor approved it (NGDK, 119834). Other cases in 1653 and 1654 (NGDK, 087547; 120846) also demonstrate that

the court did not confiscate bandits' properties. They were at most required to return or repay what they robbed from victims, but their wives and children could not be confiscated or enslaved, nor could they be given to the victim.

After the Shunzhi emperor died in 1661 and Manchu aristocrats like Oboi took power, the Qing court established new regulations for how convicted bandits should compensate the victim's loss. The Oboi Regency nevertheless did not restore the original way of confiscation. In 1661, a precedent stated that the bandit should give his wives and children to the victim as compensation; if the bandit's whole property (including his wives and children) were not enough for the loss of the victim, other bandits' (to the case) wives and children should be sold and the money should be given to the victim as compensation (KXHD, vol. 119: 5936).

In 1670, when the Kangxi emperor ruled the realm, the Qing court revised the 1661 precedent, and the revised precedent stated that only if a bandit's property was not enough to compensate his victim's loss should the bandit's wives and children be sold and the money be given to the victim as compensation (KXHD, vol. 119: 5936-7). In other words, the bandit's wives and children could not be directly given to the victim any more. In 1740, when the Qing court revised the Qing code, the above 1670 regulation was abolished. It was abolished because banditry was anyway different from treason or rebellion, and because selling children was not different from confiscation (DC, 266.18).

Besides banditry and harboring escapees, the Qing court also imposed confiscation on both Manchu and Han officials. The Shunzhi emperor even added confiscation for corrupt officials to the Qing code in 1655 (QSL, SZ, vol. 95: 746). The Shunzhi emperor hoped that severe punishment would deter corruption. Severe punishment did not work

well, and the Qing court abolished confiscation for corrupt officials in 1659 (QSL, SZ, vol. 125: 966).

In short, the Qing dynasty imposed a Manchu way of confiscation on both Manchu and Han criminals. Han officials opposed this imposition because it violated the Qing code. The Han officials successfully persuaded the emperor to abolish confiscation among bandits in 1653 when the Shunzhi emperor determined in many ways to reinstate the Ming system. As I will discuss in the future, the Qing court also abolished confiscation among fugitive cases during the Kangxi reign.

VI. Conclusion: Restoring the Authority of the Five Punishments

The Han penal system gradually predominated the Qing penal system. The Qing ruler Dorgon quickly admitted the authority of the Ming code in the provinces after he failed to impose its Manchu penal system on the Han people in 1644. In Jingshi, the Qing court maintained its Manchu penal system until 1653. During the Shunzhi Restoration from 1653 to 1656, the Qing court gradually disused the Manchu two-degree penal system and reinstated the five punishments among civilians in 1653 and among bannermen in 1656. The Qing court had also applied various Manchu penalties for a while but eventually abolished these penalties.

Bannermen enjoyed legal privileges, but their privileges were confined by the Han juridical principles. Bannermen received lashing with the whip other than beating with bamboo canes. Their punishments of penal servitude and exile were commuted. Equally importantly, the Qing court established formulas to convert between beating with the bamboo and lashing with the whip—a way to balance between the two different

punishments. Furthermore, the Qing court nominally admitted the authority of the Han penal system. In other words, bannermen's privileges must give priority to the authority of the Han penal system. A unified Qing penal system based on the principle of the Han penal system overwhelmed the different treatments between bannermen and civilians.

These privileges were a compromise between Shunzhi's embrace of Han culture and his innate identity as a Manchu. Only after Shunzhi took power did the Qing court place bannermen under the Han penal system. Shunzhi, however, must care about both Manchu and Han. Previous scholarship has considered that these privileges intimidated the Manchuness of the Qing dynasty. I am revealing the other side of the story: the Qing ruling house abandoned its attempt to apply the Manchu penalty to all under Heaven and had bannermen be punished by wearing the cangue instead of nothing. Even though wearing the cangue was not one of the five punishments, it was not a Manchu but a Han punishment, and the five punishments in the Qing code decided the length of wearing the cangue. Therefore, the privilege of commutation was a sign of sinicization.

Reinstating the authority of the five punishments is a major step toward restoring the Han juridical system. Because the five punishments are one of the core contents of the Ming and Qing codes, admitting their authority represents a key step toward restoring the authority of the Qing code. Chapter Five will demonstrate that by 1656, the Qing ruler also placed bannermen basically under the mandate of the Qing code and abolished most articles of Manchu law with only a few articles being added to the code.

Chapter 5 Reinstating the authority of the Qing code

I. Introduction

How did jurists apply the law during the Shunzhi reign? As I mentioned in Chapter Four, the previous scholarship has noticed the importance of this question but has never seriously considered it. Drawing upon archives preserved in both Beijing and Taipei, I will demonstrate that the Qing court gradually recognized the authority of the Ming and Qing codes and abandoned its own Manchu law. From 1644 to 1653, the Qing court imposed a dual-system between Jingshi and the provinces in terms of the application of laws. The Qing court quickly admitted the authority of the Ming code (the Qing code after 1647) in the provinces, but in Jingshi before 1653, the Qing court continued applying Manchu law at least among bannermen and followed the Manchu formats of proposed verdicts. From 1653 to 1656, the Shunzhi emperor gradually placed both bannermen and civilians under the mandate of the Qing code. The court step by step abolished Manchu law and added only a very few articles to the Qing code. The jurists at the Board of Punishment also changed the format of proposed verdicts by following the Ming system.

Before any further description, it is necessary to introduce the major laws in the Shunzhi period. The former Ming code was adopted by the Qing in July 1644 (QSL, SZ, vol. 5: 63). The Qing court promulgated the *Daqinglü fu* (大清律附 An Appendix of the Statute of the Great Qing) in 1645. The *Daqinglü fu* is a collection of statutes and substatutes from the Ming code. It deals with severe crimes, usually cases punishable by death or military exile. The *Daqinglü fu* was a temporary criminal law. As Zheng Qin

states, the promulgation of the *Daqinglü fu* shows the Qing court's legal pragmatism (Zheng, 1996: 152). The Qing ruler did not have any hesitation to adopt the former Ming code. The first edition of the Qing code, *Daqinglü jijie fuli* (Statutes of the Great Qing with Collected Commentaries and Appended Substatutes), was promulgated in 1647. This edition of the Qing code in many ways was another copy of the Ming code. The Qing court continued to apply Manchu law to Manchus before 1656. Manchu law was a combination of Manchu customary laws and Ming laws. However, Manchu law conflicted dramatically with the Ming and Qing codes. After 1647 both the Qing code and Manchu law were probably affected by each other. But the Qing code predominated the Qing juridical system in both Jingshi and the provinces by 1656.

It is also necessary to clarify that the Qing court might have added some articles of Ming law to Manchu law before 1644 and continued to apply them after 1644. When I argue that post-1644 Qing jurists sentenced cases in accordance with the Ming and Qing codes, I do not rule out the possibility that some articles in the codes were a merely part of Manchu law. Similarly, the Qing court promulgated the *Daqinglü fu* in 1645 and I will not distinguish the application of the *Daqinglü fu* and that of the Ming code since the former is from the latter. Also, my analyses will not be limited to the Ming code. Other Ming laws will also be considered. When I say the application of the Ming code, I sometimes refer to the application of other Ming laws or regulations like some precedents in the *Daming huidian*.

In this chapter, I will first explain the distinction of handling major cases between the Board of Punishment and the preliminary courts like the Five Wards in Jingshi. I hence outline the “system of adjudicating, transmitting, and confirming level by level”

(*zhuji shenzhuan fuhe zhi* 逐级审转复核制) and a special juridical procedure in Qing Jingshi. Second, this chapter analyzes how the Qing reinstated and upheld the authority of the Ming code (or the Qing code after 1647) in the provinces. Third, it discusses the application of laws in Jingshi from 1644 to 1653 when the Qing court applied both Manchu law and the Ming/Qing code. Lastly, this chapter considers from 1653 on, how the Shunzhi emperor reduced and then ended the authority of Manchu law and enforced the authority of the Qing code on bannermen. Due to the limitation of sources, my analyses will focus on the second level of the juridical system of Jingshi – the Board of Punishment and sometimes the Three High Courts. My analyses will exclude fugitive cases which will be discussed separately.

II. The *zhuji shenzhuan fuhe zhi* and its destiny in Qing Jingshi

One of the major characteristics of the judicial system in Ming-Qing China was the *zhuji shenzhuan fuhe zhi* or the “system of adjudicating, transmitting, and confirming level by level.” This set of procedure aimed to regulate jurists in each administrative level from abusing their power. Here I exemplify this system in the provinces in the Qing dynasty. In Qing China’s provinces, a major case with sentence of penal servitude or above was usually investigated and tried by the county or department magistrate first. The magistrate must clearly and carefully investigate everything related to the case, to charge crimes, and to offer his sentences. The magistrate however could not conclude the case, and he must send the case to the prefecture (sometimes the circuit) with his recommended judgments; the prefect reviewed and retried this case, provided his recommended judgment, and

reported it to the provincial juridical commissioner. If the punishment was penal servitude, the sentence would be effective after the governor or governor-general approved it. If sentenced to exile, the case was sent to the Board of Punishment, and the sentence was carried out only after the Board reviewed and approved the judgment. If it was a capital case, jurists in each level, from the county magistrate to the Three High Courts must recommend sentence. Implementing the sentence required the emperor's approval. In the process, from the county magistrate to high officials in the Three High Courts, all must follow the Qing code and appropriate bureaucratic regulations (Zheng, 1988: 153-5).

Such a system however never existed in Qing Jingshi.⁵⁷ When the Five Wards and other yamens sent major cases to the Board of Punishment, they did not level charges or offer sentences. Among the cases I cited in the previous chapters, the jurists of the preliminary court in Jingshi never charged crimes.⁵⁸ Except capital cases and severe cases involving manslaughter, the Board of Punishment usually concluded other major cases, such as cases punishable by penal servitude or exile, without further review. Just like what happened in Ming Jingshi, the Five Wards and other yamens sent cases to the Board of Punishment without charging crimes or offering recommended judgments in Qing Jingshi.⁵⁹

⁵⁷ This system was also applied in Ming Jingshi where the juridical system was different from the provinces. When the Board of Punishment and the Censorate adjudicated cases, they levied charges and offered sentences. But the sentences must be reviewed or re-adjudicated by the Grand Court of Revision. All sentences must be approved by the emperor. The Three High Courts concentrated on adjudication while the task of arresting and investigation was done by the various yamens such as the Jinyi Wei, the Five Wards, etc. The Five Wards and other police institutions could investigate cases but they neither charged crimes nor offered punishments.

⁵⁸ The emperor could specify certain yamens to adjudicate a case. Under such a situation, these yamens could level charges.

⁵⁹ Capital cases and a few other important cases could be reviewed by the Three High Courts or other institutions like the Deliberative Council after the Board of Punishment charged crimes and offered recommended judgments.

The continuation of both the former Ming system and the pre-1644 Qing system caused inattention to proper procedures. Before 1644, bannermen and banner institutions like the company captain sent cases directly to the Board of Punishment without sentencing crimes. After 1644, the Qing court largely retained the company captain's legal responsibility. When the Five Wards were given the power to adjudicate minor cases, the censors followed Ming practice. A case would be adjudicated faster since the Five Wards and other yamens did not level charges or offer sentences.

Failure to follow proper procedure aggravated the workload of the Board of Punishment throughout the Qing dynasty until the New Policy period. The Five Wards and other preliminary courts in Jingshi could and must send cases that they considered major ones to the Board of Punishment. It was not surprisingly that many of these cases turned out to be minor cases or even non-criminal cases (Hu, 2010a).

Inattention to proper procedure in Qing Jingshi also made it hard to know how the preliminary courts like the Five Wards investigated and tried major cases. Because few archives, if at all, were preserved in these preliminary courts from the Shunzhi period, my analyses in this chapter focus on cases forwarded to the Board of Punishment or the Three High Courts. Next, I will discuss how the Qing court applied the Ming code (and the Qing code after 1647) and Manchu law between 1644 to 1656. My analyses begin with in the provinces so that the specific story in Jingshi can be clearly displayed.

III. Apply the Ming code?

In July 1644, the Qing ruling house clearly permitted jurists to apply the Ming code, but due to the turmoil of the dynastic transition and the influence of the Manchu

juridical system, jurists did not strictly apply the Ming code before the sixth month of the second year of the Shunzhi reign (1645).

In some of the earliest cases, the jurists did cite the Ming code, but citation was not so strict. For example, in the case of Wang Sanxi in 1644, the jurists at the Board of Punishment cited the Ming code in a very coarse way. The jurists sentenced Wang according to the statute that “[F]or officers, who engages in campaigns and falsely claims to be ill in order to avoid the campaign, in each case the punishment will be increased one degree (DMLF, vol. 14: 528).” Wang Sanxi was sentenced to 100 blows of the heavy bamboo which was commuted to actual thirty-three blows. The Board of Punishment memorialized the sentence to the emperor on December 13, 1644, and the emperor approved it by simply writing “noted” (*zhidao le* 知道了) (NGTB, 1834-2). The jurists obviously cited the Ming code but the citation was not so strict. The memorial only mentioned the name of the statute. Wang was deprived of his post and degraded to a commoner. The deprivation was not in accordance with the Ming code that required an officer to be sent to the campaign (DMLF, vol. 14, 528).

In another case memorialized on December 14, 1644, the jurists partly applied the Ming code. In this case, six bannermen forcefully “bought” some pork without paying and took some money from Wang Da. They also beat Wang Da. Wang Da reported the case to the banner company captain, and the case was sent to the Board of Punishment. The Board sentenced one bannerman who beat Wang Da to decapitation according to the statute that “[A]nyone who robs goods and injures persons will be sentenced by decapitation.” The other five bannermen received 100 blows of the heavy bamboo according to the statute of “robbery, calculating illicit goods, increasing the punishment by degrees.” Because

bannermen should not be punished by the blows of the heavy bamboo, they received Manchu punishments by lashes of the whip and taking flesh with three arrows. The principal was decapitated on December 13 with the orally imperial approval. The Prince Regent approved the sentences the next day (NGTB, 1834-3). The jurists levied charges based on the Ming code but punished the criminals based on the Manchu penal system.

In this case, the jurists did not fully cite the Ming code. The related statute in the Ming code is “[A]nyone who robs others' goods in daytime will be punished by one hundred blows of the heavy bamboo and penal servitude for three years. If the calculated illicit goods entail heavier penalties, the offender will be punished for the theft with the penalty increasing two degrees. If the offender injures others, he will be decapitated (DMLF, vol.18, 655).” The jurists did not mention whether the case happened in daytime, nor did they explain the punishment for other five bannermen. The five bannermen should be sentenced to exile if the Ming code had been strictly applied. But they were bannermen, so the jurists did not mention anything about the penalty of exile.⁶⁰ On the contrary, the Board applied the Manchu penalties to punish the offenders.

Other cases show that the jurists did refer to the Ming code. However, the above cases most clearly come under particularly articles of the Ming code. In most cases, the jurists did not explicitly state which Ming code article the crime came under. As far as I can tell, among more than 60 cases memorialized before July 22, 1645 only in seven did the jurists charge crimes and cite the Ming code. This is a period when numerous officials, as an indirect way to resist Manchu law, advised the emperor to adopt the five punishments in the Ming code and to establish a new code of the realm. The chaotic time

⁶⁰ Again, as I mentioned earlier, I do not exclude the possibility that the Qing court had adopted some articles of the Ming code.

and the conflict between the Manchu and the Ming juridical systems accounted for the coarse application of the Ming code.

For cases in which the jurists neither levied charges nor cited the law, there were different situations. The jurists sentenced some cases with Manchu law, others with the emperor's newly promulgated statutes or substatutes, some with the Ming code, and some even with the jurist's personal decisions. For some cases, it is hard to know to which law the jurists referred.

In many cases, the jurists applied the Ming code without citing the code or charging crimes. For example, the Shuntian governor (*Shuntian xunfu* 顺天巡抚) memorialized a case to the emperor on January 5, 1645. Several civilians together robbed and got goods, and they resisted arrest. The governor stated that those criminals should be decapitated in accordance with the code. The Prince Regent, as was routine, ordered the Board of Punishment to review this case (NGDK, 185037). In this case, the Shuntian governor sentenced the criminals to death according to the code but he did not cite any law, nor did he levy a charge. After checking the Ming code, I conclude that the jurists sentenced the case in accordance with the Ming code. The Ming code states that “[I]n all cases where forcible robbery has been committed and goods has been taken, the offender will, without distinction between principals and accessories, be decapitated (DMLF, vol. 18, 649).”

In some cases, it is very hard to say which law was applied. For example, the Jinyi Wei memorialized a case to the emperor on January 8, 1645 in which some civilians stole some amount of copper from the Forbidden City. The Prince Regent ordered that “[T]he Board of Punishment interrogate and sentence this case in accordance with the code (*yili*

依律) and memorialize [the sentence] (NGDK, 007408; MQDA, A002-085).” Five days later, the Board of Punishment memorialized its recommendation to the emperor by stating that these criminals should be decapitated according to the code. The Prince Regent approved the sentence by saying “noted” (NGDK, 185037). In this case, the jurists mentioned that the sentence was in accordance with the code, but they did not cite the code. Considering the fact that the office of Jinyi Wei was inherited from the Ming and the officer of Jinyi Wei Wang Pengchong was a Han, the emperor’s opinion should mean that the Board of Punishment sentence the case in accordance with the Ming code. However, if we clearly examine the Ming code, it can be concluded that the criminals should not be sentenced to death. The Ming code states that a criminal will be decapitated for stealing property from the Palace Treasury (*neifu* 内府). But the code clearly states that this is a miscellaneous capital crime (*zafan sizui* 杂犯死罪) and the death penalty can be redeemed. According to a comment, this statute only refers to stealing from the Palace Treasury and stealing from other places of the Imperial City (Forbidden City was part of the Imperial City) is sentenced as ordinary stealing. In this case, the most severe punishment was exile at 3,000 *li* (DMLF, vol. 18, 633, 658-660).

With historians' hindsight, we can deduce the possible ways in which the jurists applied the law in this case. The jurists might not apply the Ming code at all. They might apply it wrongly. It was also possible that the jurists did not distinguish the miscellaneous capital crimes from true capital crimes (*zhenfan sizui* 真犯死罪). They might apply it correctly but because there was no the penalty of exile at this time and considering the crime happened in such a sensitive place, the jurists decided to apply death rather the

beating with the heavy bamboo. It was also possible that the jurists just applied Manchu law⁶¹ of which we do not know. If the jurists applied Manchu law, it indicates that the Qing court imposed Manchu law on civilians.

In sum, before the sixth lunar month of the second years of the Shunzhi reign, the Qing jurists did apply the Ming code to some extent, but the application irregular. In this period, there was no obvious distinction between Jingshi and provinces in terms of the application of the Ming code. In the provinces, this coarse application of the Ming code was more likely due to the dynastic transition; in Jingshi, it was more like the continued influence of the pre-1644 Manchu juridical system in which the jurists usually did not cite any law in sentencing. After the sixth month of the second year of the Shunzhi reign, the Qing court gradually reinstated the authority of the Ming code (the Qing code after 1647) in the provinces.

IV.Reinstating the authority of the Han codes in the provinces

As discussed in the previous chapter, the Qing court gradually restored the five punishments no later than the sixth month of the second year of the Shunzhi reign (1645). I assume the jurists also applied the Ming code in a relatively strict way in the provinces after that lunar month since implementation of the five punishments was also part of the application of the Ming code. My assumption can be supported by that fact that in some cases, the jurists now cited the Ming code in more detail. For example, in a case memorialized on January 2, 1646, the jurists sentenced an official Zhao Hongru in accordance with the statute that “[if] anyone schemes or obtains government or private

⁶¹ In 1653, two banner women committed similar offenses and the jurists offered two recommended sentences. One was based on the Qing code and the punishment was decapitation with redemption. The other was possibly based on Manchu law and the punishment was real decapitation (NGTB, 1865-14).

property by deceit or cheating, calculate the value of the illicit goods, and punish the offender on the basis of theft. [Zhao's illicit goods] amounted to 120 *guan*⁶². [Zhao] will be exempted from tattooing and be punished by one hundred blows of the heavy bamboo with exile of 3,000 *li*.” This part of sentence was clearly based on the Ming code (DMLF, vol. 18, 658-660, 672). Furthermore, as the memorial says, “[T]hey (Zhao Hongru and other offenders) all own the *Grand Pronouncements* (*da gao* 大诰), so their punishments will be reduced by [one] degree. Zhao will be punished by three years penal servitude with one hundred blows of the heavy bamboo (cited in Zhou and Zhao, 1986: 327).” *The Grand Pronouncements* was a special law written by the founder of the Ming dynasty Zhu Yuanzhang. Other yamen runners in this case were also sentenced in accordance with the Ming code first and the jurists then reduced their punishment by one degree because they had a copy of *The Grand Pronouncements*. According to Zhu Yuanzhang's order, if anyone who was sentenced to exile, penal servitude, or the beating with bamboos and his family had a copy of *The Grand Pronouncements*, his punishment would be reduced by one degree (YZDG, 93). This case was quite amazing not only because the Ming code was applied but because the Qing jurists applied the Ming laws so thoroughly. The jurists sentenced many other cases in this way. In others, the jurists might not cite the Ming code so clearly, but the application of the Ming code was obvious (e.g. NGDK, 087888).

Besides the application of the Ming code, the jurists also strictly applied some new statutes issued by the Qing after 1644. For example, in order to fight against corruption, the Qing issued new precedent. I do not know the details of the precedent. In practice, the jurists applied it frequently and in many cases they emphasized it was a new law (*xinfa* 新

⁶² *Guan* was a monetary unit in ancient China.

法). In a case memorialized on July 17, 1645 by the Shandong Inspector, a temporary county magistrate hid some illicit money confiscated from criminals. The inspector stated that according to the old code (*jiulü* 旧律), the magistrate should be punished by penal servitude. According to the new precedent, however, he would be sentenced to death. The emperor, as was routine, ordered the Board of Punishment to review the case. Two days later, the Board of Punishment sentenced the “verminous runners” (*yadu* 衙蠹) to decapitation according to the new precedent that “all runners who accept illicit goods will be decapitated.” The emperor approved the sentence (NGDK, 185040). Similar cases (e.g. NGDK, 153361) also show that the Qing court punished corrupt officials or runners strictly in accordance with the new precedent.

However, the Qing court abolished this new precedent and applied the correspondent articles in the Ming or the Qing code no later than 1647. In a case memorialized on June 1, 1647 when the Qing code had been promulgated but it had not yet reached Shanxi province, the jurists there sentenced several clerks in accordance with the Ming code and reduced their punishment by one degree on the basis of *The Grand Pronouncements*. The jurists did this in an interesting way. They stated that “[in cases in which] the offender receive the penalty of exile, only without citing the two characters of *Da gao*, the punishment will still be reduced by one degree on the basis of [*The Grand Pronouncements*]. The clerk will be sentenced to penal servitude (NGDK, 117645).” The jurists applied *The Grand Pronouncements* without quoting the two characters of *Da gao*. This case shows the Qing stopped to apply the new precedent before the promulgation of the Qing code. Cases after the promulgation of the Qing code show that such cases were sentenced according to the Qing code (e.g. NGDK, 119250).

In most cases, the jurists applied either the Ming code or the newly issued precedents strictly, but due to the chaos of dynastic transition, the jurists might sentence cases in a casual way. Jurists might misapply the code or sentence cases at their own will. The Board of Punishment, just like local officials, also intentionally sentenced cases without respecting the law. For example, in a case happening in the second year of the Shunzhi reign, an official Wang Huanru 王焕儒 in Shaanxi 陕西 province had sex with six women and sold eighty-two women. All these women were left by peasant rebels led by Li Zicheng. The jurists in Shaanxi province sentenced Wang Huanru to penal servitude without citing any law. When the Board of Punishment reviewed this case in 1646, it changed the sentence to strangulation with delay without citing any law either. Many terms of inspectors reviewed the Wang case, and every time, they all sentenced Wang to strangulation with delay. Wang was still in prison in 1654.

Wang was not executed because provincial officials believed that the Board of Punishment's sentence violated the Ming and Qing codes. The jurists in Shaanxi province might sentence the case in accordance with the Ming code which clearly states that if anyone who sells honorable persons (*liangren* 良人) or commoners as slaves will be punished by 100 blows of the heavy bamboo and exile to 3,000 *li*; if sold as wives, concubines, sons, or sons' sons will be punished by 100 blows of the heavy bamboo and penal servitude for three years (DMLF, vol. 18: 674). If Wang sold these women as others' wives or concubines, penal servitude was an appropriate sentence. Otherwise, the provincial jurists misapplied the Ming code. But definitely, the Board of Punishment did not sentence this case on the basis of the Ming code.

In reviewing this case, most inspectors stated that the Board of Punishment's sentence was not unfair in terms of the balance between the law and the crime; what Wang did was evil and he deserved death. However, according to either the Ming and Qing codes, the most severe punishment for Wang's crime was exile. Each time, jurists recommended the death penalty after the assizes. In one review, the department magistrate sentenced Wang to strangulation in accordance with the statute that "[A]nyone who devises tricks and entices and sells honorable persons and because the enticed persons are not submitted, the offender injures the enticed persons." This sentence was not in accordance with the crime because no records show that Wang injured any women. The inspector did not approve this sentence and like other inspectors, ordered Wang to be detained again and to await another review (NGTB, 1876-18).

This is a typical example of the way that the jurists misapplied the law in the early days of the Qing. The provincial jurists might have misapplied the law at the very beginning. The department magistrate obviously misapplied the law in the review. But as a whole, the Board of Punishment was the principal who misapplied the law, and the bureaucracy in Shaanxi province successfully upheld the authority of both the Ming and Qing codes for eight years.

This case also indicates that officials in the province, just like the department magistrate, might also mis-sentence cases. On July 30, 1646, when the Secretary of Office of Scrutiny for Justice Yang Huang urged the emperor to promulgate the Qing code as soon as possible, he worried that the criminal might not know why he committed violence and jurists might sentence cases on the basis of their temporary personal opinions (QSL, SZ, vol. 26: 224). Yang obviously knew the application of the Ming code. The target of

this memorial was most possibly the Board of Punishment that did not cite any law in sentencing immediate examining cases in Jingshi. Considering the huge social impact of the dynastic transition, Yang's memorial reflects the possibility that both the people and the officials might have confusion on the law.

According to Jin Zhijun, many cases were mis-sentenced and most of them occurred during the first three years of the Shunzhi reign (1644-1646) (cited from Zhou and Zhao, 1986: 330-331). According to Jin, jurists mis-sentenced some (maybe most) cases because they did not investigate carefully and got a wrong story of the crime rather than misapplied the law. This is another set of questions, and this is also understandable that jurists might not investigate the crime carefully during the chaotic time.

In sum, after the sixth month of the second year of the Shunzhi reign, jurists applied the Ming code in a relatively strict way in the provinces. As far as cases I read, the jurists applied the Ming code pretty explicitly and strictly. It is still possible that they misapplied the law and mis-sentenced cases. Generally speaking, the promulgation of the Qing code in 1647 did not make any big difference in the provinces in terms of application of laws since the Qing code was nearly a copy of the Ming code. In Jingshi, the story was very different.

V. The application of laws in Jingshi (1644-1653)

As discussed above, there was no obvious distinction between Jingshi and the provinces in terms of application of the Ming code before the sixth month of the second year of the Shunzhi reign. However, after that period, the application of laws in Jingshi

was dramatically different from the provinces. One characteristic is that from 1644 to 1653, the jurists did not cite any law, nor did they charge crimes for most cases in Jingshi. In other words, most verdicts did not refer to any law.

The sixth month of the second year of the Shunzhi reign did not make any dramatic change in Jingshi in terms of application of laws. If there were some changes, it would be that the jurists applied the Ming code or the Qing code less obviously than some cases in 1644. In a very few cases in 1644, the jurists mentioned the name of the crime. The case of Wang Sanxi and the case of Wang Da were the two cases, as far as I read, that the jurists applied the code in the strictest way among immediate examining cases from 1644 to 1653. Qing archives also show that the promulgation of the Qing code in 1647 did not obviously change anything in Qing Jingshi either. Jurists continued sentencing cases without citing any law or charging crimes.

However, we can not conclude that the jurists always arbitrarily sentenced cases. The jurists applied both the Ming /Qing codes and Manchu law. I already discussed many immediate examining cases in which the jurists did not cite any law in the previous chapters. Here I will give one example that the jurists mentioned the name of the crime. In this case memorialized by the Board of Punishment on September 19, 1648, Song Huang 宋瑄, a former official who had been deprived of his post, took a woman Zhou Shi 周氏 as his concubine and wanted to take Zhou Shi to his home place. In order to keep Zhou Shi in Jingshi, Zhou Shi's father Zhou Yilong 周一龙 had his nephew Zhou Shouren 周守仁 consult with Liu Er. The three men were all submitted themselves to the banner system (*touchong* 投充). Liu Er promised to take Zhou Shi back. Liu Er then asked Laba ,

Tuzi Taijian (Eunuch Tuzi), Li Taijian /(Eunuch Li), Wang Si (a civilian), Zhou Shouren, and Zhou Yilong together and took Zhou Shi back from Song Huang's house on September 9, 1648. They also stole some goods from Song Huang's house. The case was sent to the Board of Punishment. Liu Er was sentenced to decapitation in accordance with the statute of "forcible taking" (*qiangduo* 抢夺). Laba, Tuzi Taijian, Li Taijian, Zhou Shouren were all sentenced to one hundred strokes of the whip. Wang Si and Zhou Shi were sentenced to forty actual (equal to one hundred) blows of the heavy bamboo. The robbed goods and Zhou Shi were returned to Song Huang. The emperor approved the sentences (NGTB, 1837-2).

This is one of a very few cases in which the jurists mentioned the name of the crime. The jurists did not mention what crimes the other criminals' committed. The statute of "forcible taking" was obscure. After checking the Qing code, I believe that it should refer to a substatute under the statute of forcibly taking wives of daughters of honorable families (DQLJJ, vol. 6: 203-4). According to that substatute, the punishment should be strangulation. Liu Er was, as was routine, sentenced to decapitation as a bannerman.

For most cases between 1644 and 1653, the jurists did not cite any law, not to speak of charging crimes. Because the jurists at the Board of Punishment usually did not cite any law in passing judgment, it is difficult for present day scholars to figure out how the jurists exactly applied the law based on the verdict or other archival sources. It is almost impossible for present day scholars to know whether the jurists applied Manchu law correctly, since we do not have the *Shengjing dingli* and many articles of Manchu law remain unknown to us. For some crimes, the Qing and Ming codes and Manchu law might stipulate the same punishment, especially considering the fact that the sinicization of the

Qing juridical system occurred before 1644. Therefore, it is difficult to judge whether the jurists misapplied the Qing code (and the Ming code) or they just applied Manchu law.

We can safely conclude that there were three circumstances. First, jurist applied the Ming and Qing codes. Second, the jurists applied Manchu law. Third, the jurists misapplied either the Ming and Qing codes or Manchu law. I personally believe there were few chances that the jurists misapplied Manchu law because Manchu officials dominated the Board of Punishment before 1653. My above analyses have already clearly covered the situation in which the jurists applied the Ming and Qing codes. I will not discuss the third situation since it is impossible to figure out the real story. The above case of stealing copper from the Forbidden City memorialized by the Jinyi Wei might be an example of the third situation. What I will briefly analyze here is the situation in which the jurists applied Manchu law.

Under the condition in which no written Manchu code was left, there are still some methods to examine the possible application of Manchu law. Firstly, some articles of Manchu law can be found in some Qing records. Second, examining the criminal's punishment is a useful way to see whether the jurists applied Manchu law because some penalties do not exist in the Ming and Qing codes. Third, in some cases, the application of the Ming code or the Qing code could be definitely excluded and these cases were possibly sentenced in accordance with Manchu law. Last but not least, after the Qing court applied the Qing code in a strict way among immediate examining cases in 1653, because

many jurists were torn between the Qing code and Manchu law, we can easily find cases probably sentenced under Manchu law.⁶³

In some cases, we can tell that the jurists definitely applied Manchu law based on punishments. For example, in some cases in which the jurists applied Manchu penalties such as fining *tuhere weile*, the jurists definitely applied Manchu law. In some cases, the jurists definitely did not apply the Ming code or the Qing code. For example, in two consensual illicit sex cases memorialized in 1644, the Board of Punishment sentenced both adulterers and adulteresses with decapitation without citing any law. In both cases, a bannerman had consensual sex with another bannerman's wife (NGDK, 185037). According to the Ming code, a person who engages in consensual illicit sex will usually be punished by the beating of the heavy bamboo (DMLF, vol. 25, 857). Only if the adulterer and the adulteress had very close relationship, such as close family members like parents and children, could they be sentenced to death (DMLF, vol. 25, 861). In both cases, no records show that the adulterer and the adulteress had such a close relation. The jurists most probably applied Manchu law.⁶⁴

In sum, from 1644 to 1653 the Qing court imposed a dual system. Different codes and proceduals were imported in Jingshi and the provinces. It was clear that the Qing court continued applying Manchu law many of which obviously distinguished from the Ming and Qing codes. In terms of the application of laws and of the implementation of the penal system, the Qing court basically continued the Ming system in the provinces and the Manchu system in Jingshi before 1653. In Jingshi, the jurists usually did not cite any law

⁶³ Many fugitive cases were definitely adjudicated by Manchu law in the early Qing, but I will discuss them separately.

⁶⁴ As I will discuss in the next section, there is an article in the *Shengjing dingli* that stipulates under a certain condition, both the adulterer and the adulteress will be sentenced to decapitation.

or charge crimes for most immediate examining cases. The jurists nevertheless either applied the Han codes or Manchu law. It is almost impossible for present scholars to find how many percentages cases the jurists applied Manchu law or the Qing (Ming) code. The application of the Ming law began with the pre-1644 Qing. We however do not know how exactly the Qing adopted the Ming law before 1644, nor the extent in which the Qing widened its application of the Ming law among bannermen after 1644.

The Qing court applied Manchu law to bannermen and received little or no resistance from Han officials. What numerous Han officials opposed was mainly that the application of Manchu law on the Han people. For example, Han officials opposed to add the penalty of compensation persons guilty of mistaken killings to the Qing code, opposed the penalty of confiscation, opposed the fugitive law – a law created before 1644 and imposed on Han throughout the Qing dynasty.

The facts that Manchu law enjoyed self-evident authority, and that Han officials opposed the imposition of Manchu legal principles on Han people, can explain why the Qing code was in many ways another copy of the Ming code. Basically, the promulgation of the Qing code was not just a sign of sinicization. Instead, it was a symbol of the dual-system. The Qing court continued to apply Manchu law to bannermen and permitted the application of the Ming code in the provinces. The reason why the Qing code was another copy of the Ming code is that the Qing neither wanted widely to impose Manchu law on Han nor allowed the Han codes to be widely applied to bannermen. It is true that in this period the Qing court did apply some articles of Manchu law to Han and did apply parts of the Ming code or the Qing code to bannermen. But basically civilians were under the authority of the Ming/Qing code, and Manchus were under the authority of Manchu

law before 1653. Because of the dual system, Jingshi civilians were in most cases under Manchu legal principles.

VI. The Application of Laws in Jingshi (1653-1656)

The tenth year of the Shunzhi reign (1653) was in many ways a turning point of the Qing juridical system. As mentioned in the previous chapters, the Qing court restored the penal system of five punishments in Jingshi in 1653 among civilians. From 1653 on, the jurists also had strictly applied the Qing code to civilians. For bannermen, the situation was more complicated. In most cases, the jurists applied the Qing code to bannermen. For some cases, the Qing court continued applying Manchu law that did not conflict with the Qing code between 1653 to 1656. In the situation that Manchu law conflicted with the Qing code, the jurists offered two recommended sentences to the emperor. One sentence was based on the Qing code; the other on Manchu law. Next, I will discuss the application of the Qing code and the application of Manchu law in sequence.

A. The strict application of the Qing code

Before June 27, 1653

Probably at the beginning of 1653, Yuan Maogong 袁懋功 suggested that the value of the statute and the substatute (*lüli* 律例) lay in applicability equally to all subjects. The Shunzhi emperor positively replied to Yuan's suggestion and ordered that sentence must be in accordance with the current Qing code. The emperor also ordered relevant yamens to create regulations on the implementation of the law. Unfortunately, I

have not found Yuan's original memorial, but it is obvious that Yuan's suggestion targets the legal differences between Manchu and Han or different juridical practices between Jingshi and the provinces. The emperor promulgated his response before March 6, 1653 and it affected Jingshi immediately. The jurists applied the Qing code more strictly and Manchu law lost its self-evident authority when it conflicted with the Qing code. (NGTB, 2136-4)

In some cases, the jurists applied the Qing code to sentence culprits with clear citation. As I discussed in the previous chapter, in the earliest application of penal servitude, the jurists—they were censors of the Five Wards — charged crimes based on the Qing code. The jurists sentenced the criminal Song Shier 宋十二 to three years of penal servitude with one hundred blows of the heavy bamboo according to the statute of applying intimidation to obtain property. The jurists cited the code in great detail and the recommended punishments were in accordance with the code (DQLJJ, vol.18: 315; NGDK, 119274).

This case was an exception. It was very unusual for the emperor to order the censors of the Five Wards to jointly try a case.⁶⁵ Other cases show the Board of Punishment and the Three High Courts continued sentencing cases without citing any law or charging crimes for most cases in the first half year of 1653. But generally, the application of law was stricter than before 1653.

Two pieces of evidence can support my assumption. First, as I have mentioned, the reinstatement of the Han penal system of five punishments was a sign of application of the Qing code. Civilians received penal servitude or exile. And the basis of the sentence was

⁶⁵ The emperor ordered the Three High Courts to review this case after he received the memorials for these censors.

the Qing code. Second, when a bannerman committed an offence that could be sentenced by both Manchu law and the Qing code, the two sets of laws might conflict with each other. Under this situation, the jurists offered two sentences. This phenomenon shows the growth of the influence of the Qing code.

For example, in one case, two bondservant women (banner women) Dajie (big sister 大姐) and Xiao'erjie 小二姐 stole some silvery plates owned by the emperor. After the *booi da* investigated the case, the emperor ordered the Board of Punishment to try it. The Board of Punishment found it might be a capital case, so it co-tried this case with the Censorate and the Grand Court of Revision. The Three High Courts had two sentences. One did not mention any law and stated that because Dajie and Xiao'erjie stole plates used by the inner [place] (the imperial palace), decapitation was not unjust for them. The other one was definitely based on the Qing code. It cited the statute that “[I]n all cases of stealing property used by the inner [palace] (*neiyong* 内用), all offenders will be decapitated. The decapitation is permitted to be redeemed.” Therefore, Dajie and Xiao'erjie should be sentenced to one hundred strokes of the whip and their punishment should be immunized since the emperor issued a special edict to pardon all punishments of bamboos. The jurists did not mention the money for redeeming the decapitation. The Qing code requires penal servitude for such miscellaneous capital crimes. The Three High Courts memorialized their two sentences to the emperor for final judgment on June 10, 1653 (NGTB, 1865-14). The archive does not tell the emperor’s opinion.

The second sentence was definitely based on the Qing code. The statute of “stealing property from the Palace Treasury” clear states “[I]n all cases of stealing property from the Palace Treasury, all offenders will be punished by decapitation. [It is a]

miscellaneous (*za* 杂) or nominal [capital crime] (DQLJJ, vol. 18: 301).” On the verdict, the character of *yong* 用 might be mistaken of *fu* 府. The property used by the inner [palace] should be treated as from the Palace Treasury. Also according to the Qing code, anyone who commits a miscellaneous capital crime will be punished by penal servitude for five years (DQLJJ, vol. 1: 121). In this case, because they were banner women and there were no punishment of penal servitude for bannermen, their punishment should be only one hundred strokes of the whip.

Since this sentence was based on the Qing code, the other one was most certainly based on Manchu law even if the jurists did not cite any law. From sources I read, it was very common that the Qing jurists applied both Manchu law and the Qing code without citation. The fact that the jurists offered two sentences is also a sign of the application of the Qing code in a stricter way. As I will argue next, this phenomenon reflects that the growth of the influence of the Qing code.

Another case further supports my argument that the non-transmutable decapitation was based on Manchu law. In a case memorialized two days later, the jurists tried a civilian who committed a similar offense by this statute. In this case, civilian Qi Jinzhong 齐进忠 substituted for banner carpenter Qi Jinbao 齐进宝 and worked at Yinghua Dian 英华殿 in the Forbidden City. Qi Jinzhong stole some copper nails on the door of the Yinghua Dian. The company captain and the *booi da* interrogated and memorialized this case to the emperor without any sentencing. The emperor, as was routine, ordered the Board of Punishment to try this case. The Board of Punishment sentenced this case solely in accordance with the Qing code without citing any law. The

verdict states “[I]t is true that Qi Jinzhong has stolen copper nails on the door of the Yinghua Dian. He should be punished by forty [actual] blows of the heavy bamboo and penal servitude for five year according to the code/statute (*lii* 律). However, following the imperial edict, the penalties of penal servitude and exile will be reduced. Therefore, Qi Jinzhong will be punished by forty [actual] blows of the heavy bamboo and penal servitude for three years.” Qi Jinbao who asked Qi Jinzhong to work for him was also sentenced to one hundred strokes of the whip according to the statute (*lii* 律), but there was a special edict that pardoned those who received penalties of beating with the bamboo canes, so Qi Jinbao was exempted from whipping. The Board of Punishment solely sentenced and memorialized the adjudication to the emperor on June 12, 1653 and the emperor approved the sentencing (NGTB, 1865-15).⁶⁶

In this case, the Board of neither cited any law nor levied charges, but this case was exactly the same category with the case of Dajie and clearly, the sentence was based on the Qing code (DQLJJ, vol. 1: 121; vol. 18: 301). The only difference is that Qi Jinzhong was a civilian while Dajie and Xiao’erjie were two banner women. The sentences were different, but both applied the Qing code.

The two cases support that the proposed punishment of decapitation in the case of Dajie was based on Manchu law. First, the case of Qi was not a capital case. The Board of Punishment did not co-adjudicate this case with the Censorate and the Grand Court of Revision. Because in this period, a capital case was usually co-adjudicated by the Three

⁶⁶ As I mentioned, according to both the Ming code and the Qing code, this statute of stealing property from the Palace Treasury could be applied when the offender entered the Palace Treasury. In practice, however, anyone who stole property from the Forbidden City or other imperial palaces could be sentenced in accordance with this statute.

High Courts, the case's juridical procedure indicates that this case was not a capital one. The Qing code also clearly states that the crime of stealing property from Palace Treasury is a miscellaneous capital crime and the actual punishment of a miscellaneous capital crime is penal servitude for five years (DQLJJ, vol. 1: 121; vol. 18: 301).

Second, even though according to the Qing code, the case of Dajie was not a capital case either, but this case was co-adjudicated by the Three High Courts and the Three High Courts did recommend decapitation for both Dajie and Xiao'erjie. It was very common that jurists or institutions had different views for one case and this was one reason for cases with two sentences. But in this case, the memorial does not say any different opinions among institutions or jurists. It was very clear that all the Three High Courts and all jurists shared the same opinion. The most reasonable explanation is that the punishment of decapitation was on the basis of Manchu law.⁶⁷

Third, in the case of Dajie, the jurists at least mentioned the name of the crime when they applied the Qing code while in the case Qi, the jurists just mentioned "according to the statute" but did not cite any law or charge crimes. I assume that because the two criminals were banner women, the Qing code was not the first choice to sentence the case of Dajie. In the case of Qi, it was self-evident for jurists to apply the Qing code since Qi Jinzhong was a civilian.

In short, even though the jurists usually did not cite any law in most cases in the first half of 1653, the application of the Qing code was stricter than before 1653. As the the case of Qi and Dajie show, the Qing court punished civilians in strict accordance with

⁶⁷ I do not deny the possibility that the sentence resulted from the struggle between Manchu and Han officials in the Three High Courts. The fact that jurists collectively offered two sentences however was the safest way for them to deal with the monarchy since Shunzhi's possible preference would affect these jurists' political career.

the Qing code. When the Qing code conflicted with Manchu law, the jurists offered two recommended sentences for bannermen. Compared with the provinces, the application was still coarse, especially for bannermen since they were still punished in accordance with the Manchu penal system.⁶⁸

After June 27, 1653

As an emperor who professed Han civilization, Shunzhi was obviously dissatisfied with the situation in which the jurists did not clearly and strictly cite the Qing code. On June 27, 1653, he specifically issued an edict to stipulate officials to cite the law clearly. In this long edict, the emperor first emphasized that a good emperor did not have choice but to punish evil criminals in order to keep justice in all under Heaven. The emperor stated that he himself always had the Board of Punishment adjudicate cases first, even if he had opinions on cases. He did so in order to maintain justice. Then the emperor criticized the fact that some jurists did not cite or follow the law strictly. They even incorrectly applied the law. Even though he carefully read every legal memorial, he sometimes might not find the jurists' mistakes and might just approve the wrong sentences. The emperor asked who should be responsible. The emperor required that all officials who adjudicated cases must clearly investigate cases and to cite the original code (*benlü* 本律). The emperor ordered all yamens to obey his edict and to post it. Interestingly, the emperor emphasized: “[L]et princes and other nobles enjoyed a low status, as well as officials and commoners in every banner, all know our intention.” The emperor lastly ordered that all

⁶⁸ In the case of Dajie, the punishment for the two banner women should be penal servitude according to the Qing code, but the jurists did not mention this.

documents should be written in both the Han and Manchu languages (QSL, SZ, vol. 76: 597-8).

This edict can be read as a general admonishment that all judicial officials should strictly follow the original code, but it was very clear that the Qing intended to apply the Qing code to Manchus. It was a Manchu tradition for jurists not to cite laws in sentencing. As discussed above, officials in China proper generally strictly applied the Qing code but in Jingshi, officials seldom cited any law in sentencing. The grown Shunzhi Emperor specifically emphasized that officials from the Eight Banners to follow his order. The violation of strictly citing the Qing code, obviously, was from Manchus. As Gong Dingzi's 龚鼎孳 memorial delivered in the tenth year of the Shunzhi reign shows that Manchus dominated the Board of Punishment and they often reviewed and sentenced cases without citing any law (HQZY, vol. 6: 715-6). Gong was a vice-president of the Board of Punishment and he suggested that the Manchu officials at the Board should cite the Qing code in sentencing. The emperor used the word *benlü* "original code" to describe what officials should cite. Considering the fact that Manchus did not have a written code and even the famous *Shengjing dingli* did not acquire the status of *lü*, this word should refer to the Qing code. The phenomenon of two sentences can also indicate that the Shunzhi emperor required jurists to cite the Qing code. Otherwise, the jurists could just sentence cases of bannermen on the basis of Manchu law. Qing archives show that many Manchu legal traditions gradually diminished and the Qing court gradually put all bannermen under the rule of the Qing code, but it continued some articles of Manchu law up until the high Qing.

The jurists implemented the emperor's edict well. In many cases, officials strictly cited the Qing code directly and clearly in sentencing immediate examining cases including bannermen's cases. There was also a dramatic change in the format of verdicts. Before 1653, a verdict usually did not have any articles of law from either the Han codes or Manchu law. But now a verdict usually cited the Qing code very clearly. Of course, jurists could still misapply the Qing code and they continued applying Manchu law without citation in some cases involving bannermen. Anyway, this was a period when many systems were just roughly established.

As far as I found, the earliest case in which jurists strictly applied the Qing code after June 27, 1653 was from a memorial submitted on September 21, 1653. It was a complicated case, but the jurists sentenced all criminals on the basis of the Qing code. The principal Liu Pinghan 刘平汉 used a fake official identity and substituted a real official. Liu received one hundred blows of the heavy bamboo and exile of 3,000 *li* in accordance with the statute that “[I]n the case of knowing the circumstance and accepting the false official identification, the offender will be punished by 100 blows of the heavy bamboo and exile of 3,000 *li*.” The sentences were strictly based on the Qing code (DQLJJ, vol. 24: 378). The jurists sentenced other criminals according to the Qing code. One of them was a *touchong* bannerman. He received 70 blows of the heavy bamboo commuted to 70 whips because of his bannerman status (NGTB, 1866-13).

The jurists sentenced most cases involving bannermen in accordance with the Qing code. For example in 1653, a banner woman Sanjie 三姐 cut her master's daughter's earlap and stole her golden collar. Sanjie was discovered when she sold the golden collar. The Board of Punishment offered two sentences but both were based on the Qing code. In

the first sentencing, Sanjie was treated as a slave or a *mean* person and was sentenced to strangulation after the assizes in accordance with the statute of “[I]n cases of slaves striking an honorable person, [the slave] will be punished one degree heavier than that between commoners. If the injury causes critical disability (*duji* 笃疾), the slave will be strangulated after the assizes.” However, Sanjie’s master had taken her as a concubine. The jurists then offered a second sentencing. The jurists stated that since Sanjie had been taken as a concubine, she should not be treated as a slave and according to the Qing code, this case should be sentenced as a case between two commoners. Sanjie was sentenced to one hundred blows of the heavy bamboo in accordance with the statute of wounding a person’s ear or nose. The Board of Punishment memorialized the two sentences to the emperor on October 9, 1653. The emperor, as was routine, ordered the Three High Courts to review (NGDK, 089422).

Both sentences were based on the Qing code (DQLJJ, vol. 20: 334, 340-1, 347). The Board of Punishment’s memorial does not show different opinions among different officials. The two sentences thus should be shared by all jurists. However, if we check the Qing code carefully, the first sentence was problematic. If Sanjie was treated as a slave, she should have been sentenced under the statute of “[A] slave striking the household head’s relative in the second degree (*qiqin* 期亲) (DQLJJ, vol. 20: 341).” The punishment should be decapitation after the assizes since Sanjie injured her master’s daughter.

During the review by the Three High Courts, the Censorate applied the Qing code correctly. Still, the Three High Courts had two different views. The Board of Punishment did not hold its two previous sentences any longer but recommended the second one. The Grand Court of Revision had the same opinion with the Board of Punishment. They both

argued that Sanjie should be treated as his master's concubine rather than a slave and be sentenced to one hundred strokes of the whip in accordance with the Qing code. The Censorate, however, argued that Sanjie should be sentenced to decapitation after the assizes in accordance with the statute of "[A] slave striking the household head's relative in the second degree." The Three High Courts memorialized their two sentences to the emperor on February 2, 1654. The emperor approved the Censorate's sentences and Sanjie was sentenced to decapitation after the assizes (NGDK, 089423).

The emperor's opinion shows that Sanjie did not change her status even though she was taken as a concubine by her master. This is a case involving only bannermen.⁶⁹ Different jurists might have different views on this case, but they all cited the Qing code. This was also a case on which different institutions maintained different sentences. This was not unusual when each yamen of the Three High Courts worked separately.

B. The application of Manchu law

Besides the application of the Qing code, the Qing court still applied Manchu law among bannermen for some cases. The Ming system had already affected the pre-1644 Qing juridical system. The Qing conquest of China proper obviously furthered the influence of Ming law. Therefore, after the Shunzhi emperor ordered jurists to cite the law to adjudicate cases in 1653, the same jurists could cite the Qing code directly to punish bannermen in most cases. But for some cases, the Qing jurists continued applying Manchu law.

⁶⁹ Other examples in which jurists applied the Qing code may be found at NGTB, 1869-6, 1869-9, 1871-3; NGDK, 087568, 086745, 089439, 086746.

Just like the period from 1644 to 1653, the Qing often applied Manchu law without citation after 1653. With historians' hindsight, it can be deduced that the jurists applied Manchu law for some cases. In the period from 1653 to 1656, the application of Manchu law was easier to be defined since the Qing code was more strictly applied than before. There were two situations in which Manchu law was applied. One is that the Qing code did not have appropriate articles to regulate some crimes but Manchu law had, the other that a crime could be sentenced by both the Qing code and Manchu law. In the first situation, the jurists usually applied Manchu law without citation. In the second situation, the jurists usually offered two sentences based on both the Qing code and Manchu law.

The jurists applied Manchu law for certain acts not considered crimes under the Qing code. For example, in a case in which a banner official Sheta 設塔 raped one of his slave's wife, the jurists applied Manchu law to punish the criminals. The Board of Punishment found Sheta guilty. Because Sheta was a civil official (*wenguan* 文官), his case should, as was routine, be sent to the Board of Officials for consideration. Another bannerman Kebushina, who helped Sheta cover the crime, was sentenced to twenty-seven strokes of the whip. Because there was a special amnesty by the emperor, both criminals' punishments were exempted. The Board of Punishment memorialized the sentences to the emperor on August 19, 1654 (NGDK, 086744).

The jurists did not cite any law but definitely sentenced this case with Manchu law. First, the first version of the Qing code does not mention anything about any consensually sexual activities between masters and their slaves. The Qing code did not criminalize sex between a master and his married female servants until the Kangxi reign (DC, 370.01). Second, the punishment Kebushina would have received, twenty-seven strokes of the whip,

could only from Manchu law. Neither the Ming nor the Qing codes has such a punishment. Third, the Kangxi *Daqing huidian* mentions a regulation established at the beginning of the Qing dynasty that states “[A]nyone who engages in sex with servant women who have husbands will be punished by twenty-seven strokes of the whip” (KXHD, vol. 123: 6130). The punishment that Kebushina received was exactly the same as this regulation requires. It was highly possible that Kebushina received the same punishment with this regulation because he covered Sheta’s crime. Lastly, based on this regulation, the Qing issued a revised statute in 1673. The statute stated that “anyone who engages in illicit sex with a married female servant subordinate to his household (*jia xia you fu zhi pufu* 家下有夫之仆妇) shall be punished by forty blows of the light bamboo in accordance with the statute against ‘doing that which ought no to be done, light cases.’ If a civilian commits [this crime], he will also be punished in accordance with this statute” (KXDQHD, vol. 123: 6130-1). From this statute, it can be concluded that the Qing only applied this regulation to bannermen before 1673, and that such a regulation was originally a precedent of Manchu law.⁷⁰

The above case is an example in which the jurists applied Manchu law where an offense was not considered to be a crime by the Qing code. In the second situation where Manchu law conflicted with the Qing code, jurists were torn between the two different sets of laws. The jurist’s dilemma was verified by many cases where the jurists offered two different sentences, one based on the Qing code, the other on Manchu law. From the

⁷⁰ Matthew Sommer (2000: 48) argues that the criminalizing the sex between a master and his married female servant or slave in the Qing dynasty was probably influenced by Lei Menglin’s commentary on the Ming code. Such an argument can hardly explain why the early Qing ruling house applied this crime only to bannermen before 1673. This precedent questions Sommer’s observation that there was “no evidence of ethnic Manchu influence on *any* aspect of the Qing regulation of sexuality” (2000: 116).

bureaucracy's perspective, it was a regular and safe way to list all possible sentences and to ask the emperor for final judgments. In most cases, the jurists applied Manchu law without citation. But in a few cases, the jurists mentioned articles in Manchu law.

For citing articles in Manchu law, many thanks to Liu Jinghui, we can find one article in the *Shengjing dingli*. The jurists mentioned this article at least in two cases. In one case, bannerman Ashuhuduo 阿叔虎朵 had consensual sex with the wife of another bannerman Alini 阿哩呢. The Board of Punishment was torn between two sets of conflicting laws. One was the Qing code; the other the *Shengjing dingli*. According to the Qing code, an act consensual illicit sex was punishable by eighty blows of the heavy bamboo for both the adulterer and the adulteress. However, both would be sentenced to death according to an article in the *Shengjing dingli* that “if a woman's husband is militarily dispatched and she commits illicit [consensual] sex, both the woman and the man will be sentenced to death.” The gap between the two assumed punishments was tremendously wide. The case was tried during the Summer Assizes period. There was a special regulation for cases deserving compassion (*jin* 矜) and cases in which the offence/sentence was uncertain (*yi* 疑) — jurists must ask the emperor's opinion. The Board of Punishment listed possible ways to deal with the case: sentencing in accordance with the *Shengjing dingli*; whipping; postponing the adjudication and waiting for Alini who was then in service. The jurists delivered the memorial on July 27, 1654. The emperor ordered that “[T]he wife of Alini and Ashuhuduo will be just exempted from death and be lashed with one hundred strokes of the whip” (NGDK, 117478).

The emperor's opinion was simple but the meaning behind it was complex. When the Board of Punishment sent the recommended sentence to the emperor, it clearly indicated that if the jurists sentenced the case in accordance with the Qing code, the punishment would be eighty strokes of the whip (both were bannermen); if in accordance with the *Shengjing dingli*, it would be death. Strictly speaking, the jurists misapplied the Qing code. Both should have been sentenced to 90 blows of the heavy bamboo since the women had a husband (DQLJJ, vol. 25: 382). During the Summer Assizes period, this case should be specially sent to the emperor for consideration. Obviously, the two criminals were not worthy of compassion. This was a case with uncertainty (*yi*) because of the two different laws. The emperor's opinion, one hundred strokes of the whip, followed neither the Qing code nor the *Shengjing dingli*. On the contrary, it was more like a reduction from the death punishment when one hundred strokes of the whip was a regular punishment below the death penalty in accordance with the Manchu penal system.

The significance of this case is that the Board of Punishment considered the Qing code as alternative to Manchu law. As mentioned above, in several cases of consensual sex among bannermen, both the adulterer and the adulteress received the death penalty. These cases were sentenced by Manchu law. But now in 1654 the *Shengjing dingli* lost its self-evident authority when it conflicted with the Qing code.

This was not the only case in which the *Shengjing dingli* was referenced. Liu Jinghui (1969) found another similar case in which the jurists were torn between the Qing code and the *Shengjing dingli*. In this case, Li Si 李四, who was a servant of a bannerman, had consensual sex with Luoduo's 罗多 wife when Luoduo was dispatched at war. The Three High Courts co-sentenced this case and listed three ways to conclude it: one

hundred strokes of the whip in accordance with the Qing code, decapitation in accordance with the *Shengjing dingli*, and postponing the sentencing and waiting for Luoduo. The Three High Courts memorialized their sentences to the emperor on June 15, 1656 and the emperor approved the third way. Both Li Si and the wife of Luoduo were detained at the city gate. On September 9, 1656, because the emperor issued a special edict of amnesty on August 26, 1656, the Board of Punishment asked the emperor to pardon them and to release them after Luoduo came back (cited in Liu, 1969: 50). We do not know the emperor's response.

It seems that the Board of Punishment did not solely memorialize this case. This might be the reason that in this memorial, at least from Liu's quotation, the jurists did not cite the Qing code. The jurists only mentioned that the sentence was in accordance with code (*lü*). The punishment of one hundred strokes of the whip was exactly the same with cases in which a slave or a servant had consensual sex with a married woman (DQLJJ, vol. 25: 382, 386). Again, this case shows that the *Shengjing dingli* has its self-evident authority.

Except for these two cases where the jurists referred to the *Shengjing dingli*, in other cases where Manchu law was applied, the jurists either did not mention any law or just occasionally mentioned the article. For example, in a case memorialized on February 25, 1655, banner houseman Zhao'erbing 招儿丙 beat Dai Tianxi 戴天锡 who died the next day. Zhao'erbing did not run away after he beat Dai Tianxi. The Board of Punishment was torn between two different sets of laws. Most officials argued that Zhao'erbing should be sentenced to strangulation after the assizes in accordance with the statute that "anyone who, during an affray, strikes, and kills another, regardless of whether

he has struck with the hand, or the feet, or with another object, or with metal knife, will be punished with strangulation with delay.” Officials who maintained this opinion included both Manchus and Han. Another opinion held by three Manchu officials argued that “[Zhao’erbing] should be strangled [after the assizes] according to the [Qing] code. But as it is examined, if a violent bandit (*qiangzei* 强贼) have robbed but voluntarily confesses his crimes, he will be exempted from death and be lashed with one hundred strokes of the whip.” The Board of Punishment memorialized these two sentences to the emperor. As was routine, the emperor ordered the Three High Courts to review this case (NGTB, 1884-13). It was very obvious that the three Manchu officials applied a regulation from Manchu law. They clearly stated that Zhao’erbing would be sentenced to strangulation after the assizes on the basis of the Qing code.

In most cases when the jurists applied Manchu law, the jurists did not cite any law. In a case from Hubei province, bannerman Yanbu followed his master’s two elder brothers to go to war (*chuzheng* 出征). His master’s two brothers died and when the mourning period was not over, Yanbu slept with prostitutes, gambled, and wore his deceased masters’ clothing. Yanbu’s master reported the case to the Board of Punishment. The Board had two sentences – one corporal and one capital. The jurists strictly applied the Qing code⁷¹ in determining the corporal punishment of one hundred lashes of the whip. In 1654, jurists did not arbitrarily sentence cases. If the Qing code was not explicitly invoked, they must have relied on prevailing Manchu legal customs. Therefore the capital punishment of decapitation, since the jurists did not invoke any specific law, must have

⁷¹ The jurists stated that the Qing code did not have any exact article for this crime, but the jurists made an analogy by strictly applying the Qing code.

been implicitly based on prevailing Manchu practices. The Board memorialized the two sentences to the emperor on February 27, 1654. The emperor ordered the Three High Courts to review this case on the next day. The memorial does not show that different officials had different opinions on the two sentences.

During the review by the Three High Courts, the Board of Punishment still held its original position of two sentences. The Censorate's position was the same. But the Grand Court of Revision supported the second sentence based on the Qing code. That is, the Board of Punishment and the Censorate supported the sentence of decapitation. The Board of Punishment, the Censorate, and the Grand Court of Revision supported the sentence of one hundred strokes of the whip. The Three High Courts memorialized their review to the emperor on May 29, 1654. The emperor approved the sentence of one hundred strokes of the whip which was based on the Qing code (NGTB, 1872-3).

In sum, from 1653 to 1656 the Qing court gradually applied the Qing code to both civilians and bannermen. The Shunzhi emperor's edict prompted jurists to apply the Qing code more strictly and explicitly. Civilians were under the authority of the Qing code. Bannermen were also mainly under the authority of the Qing code, but the jurists still might apply Manchu law to bannermen. When an act violated Manchu law but there was no corresponding articles in the Qing code, jurists probably just applied Manchu law. When Manchu law and the Qing code conflicted, jurists usually offered two sentences and the emperor seldom approved the sentence which was based on Manchu law. Due to the Manchu juridical tradition, jurists usually applied Manchu law without citation.

The Qing court dramatically changed its juridical policy in 1653. Manchu law maintained its self-evident authority only for offenses that were not considered as crimes

by the Qing code. In most cases, including cases in which jurists must give two sentences due to the conflict between Manchu law and the Qing code, the jurists applied the Qing code. In one word, from 1653 to 1656, the influence of the Qing code grew and overwhelmed Manchu law.

VII. The Qing Code in the Manchu Language

Since Manchu law was not simply folded into the Qing code, the strict application of the code after 1653 in Jingshi, especially among bannermen, gradually recognized the authority of the Qing code. The more the Qing jurists applied the Qing code to bannermen, the less they applied Manchu law. The promulgation of the Qing code in the Manchu language and the prototype of the statute of “committing crimes and avoiding banishment” were the two key steps toward the triumph of the Qing code.

When the Qing court promulgated the Qing code, the code did not have a Manchu version. In 1653, two censors, Bai Shangdeng 白尚登 and Wang Guangzong 王光宗 stated that “[I]t is more valuable to have officials who understand the law than to have a unified code.”⁷² The context was that the many Manchu officials did not understand the Qing code because it was written in Han language and many Manchus (bannermen) and Han lived together and local officials did not know Manchu law. The censors suggested to the emperor promulgating a Manchu version of the Qing code and also the compiling of Chinese version of Manchu established precedents (*kaoli* 靠例). The censors intended to have the Han officials understand Manchu law and the Manchu officials understand the

⁷² This is a response to Yuan Maogong's view that the Qing code should be applied to all under Heaven.

Qing code. On March 6, 1653, the emperor, as was routine, ordered the Board of Punishment to discuss this suggestion (NGTB, 2136-4).

The Board of Punishment lost the copy of the memorial with the vermilion rescripts (*kechao* 科抄), but two years later Qing court did promulgated a Manchu version of the Qing code. On November 15, 1655, the emperor decide to promulgate a Manchu version of the Qing code because jurists still did not cite the law in sentencing as strictly as Shunzhi wished. The emperor required the Board of Punishment to present the Qing code in both Han and Manchu texts to him (QSL, SZ, vol. 94: 740-1). The Board did so on January 5, 1656. In the memorial, the Board also stated that it would compile the precedents established at Shengjing and precedents established after 1644 – or Manchu law. The reason that the Board mentioned this is that the Board got a copy of the lost *kechao* on December 28, 1655. On January 11, 1656, the Qing court promulgated the Qing code in Manchu text (QSL, SZ, vol. 96: 752).⁷³

However, despite of the two censors' request, the Qing court probably never promulgated a written Manchu law. Had this been a high prioity, it would be unusual that in more than two years, the emperor did not once mention that the Board did not respond the two censors' memorial. A possible explanation is that Shunzhi did not want the compilation of Manchu law. A piece of evidence from the *Qing shilu* further supports that the Qing court never promulgated the Manchu law. As a response to Shunzhi's order, officials finished the examination and revision of the Qing code in 1660. These officials

⁷³ On the same day, the Board formally responded to Bai Shangdeng and Wang Guangzong's memorial on printing the Qing code in Manchu and compiling the Manchu established precedents or *kaoli* in Han. The Board stated that the Qing code in Manchu had been already printed and presented to the emperor for promulgation (when the Board wrote the memorial, it obviously did not know the emperor already had decided to promulgate). The Board did not mention anything about the compilation of the Manchu *kaoli* (NGTB, 2136-4).

clearly distinguished those that should be added to the code and those that should not be added from articles in the *Shengjing dingli*, the emperor's edicts in the past years, and precedents from each yamen (QSL, SZ, vol. 134: 1036). This record demonstrates that some articles of the *shengjing dingli* were added to the code and the Qing court had not promulgated the Manchu law. If they had compiled the Manchu law before 1660, these officials should have mentioned it in 1660.

The Shunzhi emperor actually abolished Manchu law step by step. In early 1653, he clearly required jurists to apply the Qing code. Manchu law lost its self-evident authority when it conflicted with the Qing code. On June 27, 1653, the emperor further required all officials, especially those under the banner system, to explicitly cite the Qing code. After this edict, jurists cited the Qing code directly and levied charges when sentencing. Partly due to the fact that the Qing code was written in Han text that many Manchu officials was unable to read, jurists might still misapply the Qing code. The emperor then further ordered to print the Qing code in Manchu text on November 15, 1655. The Manchu version of the Qing code was finally promulgated on January 11, 1656. In 1660, the Qing court decided to add some articles of the *Shengjing dingli* to the Qing code. This definitely shows that the Qing code, not the *Shengjing dingli*, was the orthodox code of the Qing dynasty.

In my opinion, the Qing code won authority as the dynasty's orthodox code in 1656. The symbols were the promulgation of the Qing code in Manchu text and of the prototype of the statute of "committing crimes and avoiding banishment." This promulgation of the Qing code in Manchu facilitated the application of the code by Manchu officials. The promulgation of the prototype of the statute represented that the Qing abolished its

Manchu penal system and recognized the orthodox authority of the penal system of five punishments in the Qing code. In other words, any sentence based on the Qing code enjoyed its legitimacy and was not empty words any more. Bannermen, like civilians, were also nominally under the five punishments in the Qing code.

Unfortunately, I can find very few cases in the post-1656 Shunzhi era from the extant archives preserved in either Beijing and or Taipei, but a few extant cases did demonstrate that the Qing court applied the Qing code to sentence bannermen. For example, in a case where bannerman Sahali 萨哈利 had illicit sex with his aunt, the Board sentenced both to immediate strangulation in according with the Qing code.⁷⁴ Because Sahalian's grand-father and uncles had sacrificed in the battle field, the Board reduced his punishment by one degree. Sahalian received a punishment of exile. As a bannerman, he would wear the cangue for two months and received one hundred strokes of the whip. The Board reaffirmed Sahalian's aunt's punishment of immediate strangulation. The emperor ordered the Three High Courts to review this case and we do not know the ultimate result (NGTB, 1918-6).

The recognition of the authority of the Qing code in 1656 does not mean that Manchu law instantly died away. Jurists still applied some articles of Manchu law after 1656. As discussed in the previous chapter, the Qing court did not stop the punishment of fining *tuhele weile* until the Kangxi reign, which indicates that the articles related to *tuhele weile* were still effective. The Qing court also added a few articles of Manchu law to the

⁷⁴ The Board might have wrongly applied the code since Sahali's father and his aunt's husband were not blood brothers. It was not strange that the Board misapplied the code during the Shunzhi reign.

Qing code. One typical example is the precedent of masters having sex with their married female servants.⁷⁵

VIII. Conclusion: from Manchu law to the Qing code

The Qing court recognized the authority of the Qing code and placed Manchus under the mandate of the code (including its penal system of five punishments) between 1653 and 1656. The Qing ruling house was smart enough to permit jurists to apply the Ming code in 1644. But in Jingshi where most Manchus resided, by following the Manchu juridical tradition, the verdict usually did not cite any law from 1644 to 1653. The jurists, however, did apply the Ming and Qing codes even though Manchu law still enjoyed the authority among bannermen. During the Shunzhi Restoration from 1653 to 1656, the Shunzhi emperor had gradually placed both civilians and bannermen under the Qing code. The jurists strictly cited the Qing code that eventually replaced Manchu law. After 1656, both civilians and bannermen in Jingshi were largely sentenced by the Qing code, adjudicated by the Board of Punishment or the Three High Courts for major cases, and punished nominally or actually by the penal system of five punishments. In short, the juridical changes occurred during the Shunzhi era represented a continuation of the Qing policy of adopting Han juridical system that had began before 1644 when the Qing court had decided to apply the *Daming huidian* in sentencing.

⁷⁵ It is very difficult to calculate how many articles of Manchu law were added to the Qing code because we do not know the exact content of Manchu law. If an article was added to the Qing code after 1656, it is not easy to judge whether the article was from Manchu law or simply the ongoing social practice. Consideration the similarities between the Ming code and the Qing code, there should not be many articles of Manchu law were added to the Qing code. But the detailed story needs more research.

Chapter 6 Fugitive Cases and the Fugitive Law

I. Introduction

The turmoil of the Ming-Qing transition and the Manchu alien rule heavily hit the Shaanxi peasant Liu Peishi family. On February 17, 1645, Liu Peishi's daughter Dajie was “taken” by “eastern soldiers” or Manchurian soldiers. She then was allocated to bannerman Yegese 叶格色 as a female slave (*bi* 婢). Two years later, on May 14, 1647, by crossing more than one thousand kilometers, Liu Peishi arrived in Jingshi and found his daughter Dajia. In the meantime, Yesege had been dispatched to the battlefield, so Liu took Dajia and Yesege's another female servant Erjie to his home place in Sanyuan county, Shaaxi province. This is such a heroic story: a brave father rescued his daughter from the center of the alien Manchu battalions and saved another female slave. It was a miracle that they safely arrived to Shaaxi. However, after returning home, they encountered fear and horror. The presence of the fugitive law marked an area under Qing control. Liu Peishi's neighbor reported the matter to the county authority which prosecuted the Liu family under the fugitive law that punished fugitives, harborers of fugitives, and anyone who knew but did not report fugitives.

The Shaanxi governor sent Liu and the two female slaves back to the Board of War in Jingshi that transferred the case to the Board of Punishment. The Board of Punishment adjudicated the case and memorialized it to the emperor on November 3, 1647. The proposed verdict said, “since Liu Peishi's daughter Dajie has already been 'given' to

Yesege as a female slave, she was an 'eastern women'." The Board adjudicated the case in strict accordance with the fugitive law, now an article in the 1647 Qing code without direct citation: "Liu Peishi shall be sentenced to decapitation in accordance with the statute, his wife (or wives), sons, daughters and family properties will be confiscated and be distributed in accordance with the precedent (*li 例*)." The Board sentenced both Dajie and Erjie to one hundred strokes of the whip and returned them to their legal master Yesege. The Board exempted Liu's neighbours from punishment because one of them reported the story. The emperor approved these sentences by saying that "Liu Peishi is to be decapitated immediately, and other [sentences] are to be implemented as recommended"(NGDK, 087719).

Liu Peishi's heroic action cost him his life and that of his family. His daughter Dajie continued to be a female slave serving her master Yesega. The court confiscated his property and enslaved his wife and other children. Only one of Liu's neighbor benefited from this tragedy. The court awarded him part of Liu's property. Otherwise, all of Liu's neighborhood faced exile.

This was just one of many tragedies caused by the fugitive law — a typical example that the Manchu slavery did not fit Chinese soil and one of the focuses of Manchu-Han conflicts. This chapter deals with the fugitive cases and the fugitive law. As I have demonstrated, the Qing court established a unified juridical system in Jingshi that mainly inherited from the Ming dynasty and eventually recognized the authority of the Qing code in 1656. My previous analyses exclude the fugitive law and fugitive cases. Did the fugitive law and the adjudication of fugitive cases experience similar changes in adopting the Han juridical principles?

By drawing on archives and other Qing records, the answer is “yes.” Han juridical principles gradually influenced and prevailed over both the fugitive law and the adjudication of fugitive cases. The fugitive law refers to various customs, edicts, statutes (*li* 律), and regulations (*zeli* 则例) applied to stop all bannermen (including officials, slaves, and regular bannermen or *zhengshen qiren*) from escaping. It evolved from a Manchu law, to a statute of the Qing code, and lastly to a Qing law (*qingfa* 清法). By the mid-eighteenth century, the fugitive law was not a tool through which Manchus oppressed Han any more. The target of the law transferred from slaves to regular bannerman. The court adopted the Han penal system of five punishments and abolished some Manchu penalties like hamstringing in revising the fugitive law. In terms of adjudication of fugitive cases, the Shunzhi emperor also treated fugitive cases specifically, but the Han bureaucratic rule gradually influenced the adjudication. By 1699, the Qing court had handled fugitive cases similar with other cases involving bannermen.

Fugitives as a problem and the fugitive law as an “evil” policy in the early Qing

“Fugitives” refer to escaped bannermen — regular bannermen, slaves, and even elite.⁷⁶ Before 1644, fugitives referred to both regular bannermen and their slaves. During the Shunzhi reign, they were mainly slaves, but gradually more and more regular bannermen (including Manchu elite) also became fugitives. “Harborer” refers to those who hid or accommodated fugitive bannermen. “Slaves” in this section usually refers to *qixia jianu* or *nupu* (slave housemen and servants under the banner system) or other

⁷⁶ My research excludes Mongolian fugitives.

similar terms like *manzhou jiaren* or housemen of Manchus. *Touchong* bannermen or *touchong* were included as slaves. Ethnic Han comprised the majority of these slaves who also simultaneously enjoyed bannerman legal status.

The phenomenon wherein tens of thousands of slaves fled from the banner system after 1644 immediately became a serious problem. Both prince regents, Dorgon and Jirgalang's attitudes demonstrate their perceived severity of this problem. On September 8, 1644, the Prince Regent Dorgon decided to establish the *baojia* 保甲 system or mutual surveillance system. He specifically identified fugitives and bandits as targets of the *baojia* system. (QSL, SZ, vol. 7: 76-7). On October 12, 1644, when the Shunzhi emperor arrived at Yongping 永平 prefecture, the Qing court decreed that the prefect and other officials must immediately arrest and send fugitives to Jingshi. In the name of the Shunzhi emperor, Jirgalang ordered all officials at the Shanhai Pass (Shanghai Guan 山海关), which was a symbolic place connecting the two sides of the Great Wall, to comply (QSL, SZ, vol. 8: 86). Examined with the *Qing shilu*, this was the first edict issued by Jirgalang after he crossed the Great Wall with the baby emperor.

The fugitive problem was becoming immediate not only for the Qing rulers, but also for officials. Both Dorgon and Jirgalang's edicts, as well as various versions of the fugitive law, required local officials to catch fugitives. Catching fugitives soon became an important task for Qing officials. As a local official stated in 1655 "the catching of fugitives is priority of the Qing dynasty" (KYQ, 460; SZTR, 80-81).

A high official's suicide further demonstrates the importance of the fugitive law. In 1658, when the desperate high official Zhang Xuanxi 张悬锡 (the Governor-general of

Zhili, Henan, and Shandong provinces) wrote a memorial before his unsuccessful suicide. He stated that the fugitive law was next only to corruption as issues that the emperor must rectify in order to pacify the realm. Zhang stated, “Your Majesty strictly prohibits fugitives, but local ruffians always take advantage of the prohibition to blackmail [the people]. If [Your Majesty] does not stop this custom, the realm cannot be pacified” (QSL, SZ, vol. 116: 906-7). Zhang’s memorial demonstrates the importance of the fugitive law, which was at the center of the Qing politics during the Shunzhi reign.⁷⁷ Zhang viewed the law’s one consequence as evil enough to prevent the Qing court from pacifying China when the Southern Ming dynasty still resisted the Qing forces in 1658.

Slaves had multiple origins. Many were Han captured during the Ming-Qing transition. Some submitted themselves to bannermen — not always voluntarily. Some received enslavement because they committed certain crimes. In the early years of the dynasty, bannermen at times bought slaves (Meng, 1981b; Xu, 1983; Luo, 1986; Ding, 2003: 247-253). Slaves worked in banner households and cultivated the land in the countryside. One of the acute problems after 1644 was that slaves captured earlier (most before 1644) in China proper and relocated to Manchuria, increasingly returned with banner families to the now conquered regions (Jingshi and Northern China) from which

⁷⁷ The Shunzhi emperor even prohibited anyone from discussing anything related to fugitives in 1655 (QSL, SZ, vol. 90: 707). The ban was ineffective to the desperate high official who decided to die. Zhang tried to commit suicide because he was humiliated by a Manchu official after the official failed to extort gift or money from Zhang. Considering Zhang's status, Shunzhi “raged” and ordered several officials to investigate this case. After he acquired the truth, Shunzhi administratively punished Zhang for his attempted suicide (QSL, SZ, vol. 117: 909). Tragically, Zhang successfully committed suicide on August 10, 1658 (15. 7.12.) Shunzhi did not severely punish Zhang for his suicide or discussion of the fugitive law, but he did not severely punish the relevant Manchu officials either (QSL, SZ, vol.119: 923, 925).

they originally came. This geographic proximity made easier for slaves to return to their original families.

There were many reasons for slaves to flee but the hard life was definitely a significant factor (Liu, 1967: 1052-55; Meng, 1981b: 95-6). The Shunzhi emperor repeatedly referred to the slaves' painful lives (e.g. QSL, SZ, vol. 102: 788). In 1655, the senior vice-president of the Board of Punishment Li Jiqi stated that several hundred slaves committed suicide every year in Jingshi. The specific number was not available for him because such case reports were written in Manchu. Li suggested the emperor order the bannermen to treat their slaves benevolently as he believed that such a policy would diminish not only the number of suicides, but also the number of fugitives (NGDK, 089427). Qing records show that even during the early Kangxi period the problem of slave suicide due to their masters' oppression was still serious — there were more than two thousand cases each year (Li, 1998: 125).

The number of fugitives was tremendous, but a detailed number is unavailable. Qing records reveal fragments of the story. In the months following Dorgon's decision to lessen punishments of harborers, tens of thousands of slaves fled (QSL, SZ, vol. 26: 218). According to Shi Dun (1959: 90), two years after the Qing army took Beijing, seventy percent of all slaves had escaped. In 1654, a record stated that more than thirty thousand slaves escaped in one year but the Qing court caught less than one tenth (QSL, SZ, vol. 85: 674). Fugitives diminished during the Kangxi and Yongzheng reigns, but the number was still thousands every year. In a year from the first day of the fourth month, in the twenty-seventh year of the Kangxi's reign (1688) to the last day of the third intercalary month, in the twenty-eighth year of the Kangxi's reign (1689), the number of fugitives was

8, 814 and the Qing court only captured 2, 372 (NGTB, 2276-3; KYQ, 467). A record from 1728 indicated that four or five thousand slaves fled every year (KYQ, 468).

The Qing court tried to stop slaves from escaping in order to maintain Manchus' economic interest. Manchus from nobles to rank and file⁷⁸ all relied heavily on slaves to make a living so fugitives endangered bannermen's livelihood (Liu, 1967: 1070). The Shunzhi emperor clearly stated that it was slaves who cultivated the land and herded horses for Manchus (QSL, SZ. Vol. 90: 706). For a Manchu, once a slave escaped, he lost not only property but also labor. Fugitives undermined Manchus' economic base and further jeopardized Qing rule. A harsh fugitive law thus became inevitable.

The fugitive law harmed the Han. Scholars consider the fugitive law was one of the five “evil policies”⁷⁹ (*bizheng* 弊政) in the early Qing (e.g. Wei, 1991). These five policies were the evident manifestation of the alien rule of the Qing dynasty. In 1646, Dorgon prohibited anyone from discussing anything related to these five policies (QSL, SZ, vol. 28, 237). The fugitive law, “enclosure of the land,” and “submitting to bannermen” served the bannerman's economic interest and they were actually three interwoven problems that all connected with fugitive cases. Enclosure of the land was the process in which bannermen seized ownerless or civilian's land. Because regular bannermen usually did not cultivate the land themselves, they needed slaves to work for them. Therefore, bannermen brought lots of slaves from Manchuria with their households. Meanwhile, many Han people also submitted themselves to bannermen. This process of

⁷⁸ Liu Jiaju (1967: 1054) has pointed that during the Shunzhi reign, more than ninety percent fugitives were slaves of commoner Manchus; only less than ten percent were slaves of Manchu nobles or officials.

⁷⁹ The five evil policies were queue order, Manchu style of caps and robes (*yiguan* 衣冠), “enclosure of the land” (*quan di* 圈地), “submitting to bannermen” (*touchong* 投充), and the fugitive law.

submitting was *touchong*. Some Han offered themselves simply because their land had been taken by bannermen. Not surprisingly, some Manchus forcibly took Han through and some Han voluntarily offered themselves to the banner system in order to take advantages of bannermen's privileges.⁸⁰ The Qing court eventually abolished the two policies of *touchong* and enclosure of the land⁸¹ and retained the fugitive law up until the end of the dynasty.

The state of the field

Previous scholars have different perspectives on the fugitive law and the fugitive problem, but they all agree that the manner by which Manchus changed the fugitive law was a sign of sinicization. Their research however has at least three shortcomings. First, the complicated relation among the emperor, Manchus, and Han officials is weakly studied. Seldom have scholars seriously studied how Dorgon, Shunzhi, and Oboi upheld or considered Han interest when they revised the fugitive law. The previous scholars also does not consider the decisive role of the Shunzhi emperor in changing the fugitive law. Second, their sources are limited and therefore their research misses some important

⁸⁰ These Han became *touchong* bannermen or slaves under the banner system. One interesting aspect of these slaves was their identities as bannermen and during the early Qing, they also enjoyed bannermen's legal privileges of commuting the penalties of penal servitude, exile, and military exile and they were also slashed with whips.

⁸¹ Both Dorgon and Shunzhi realized the harmful influence of enclosure of the people's land. From May 2, 1647 on, they had repeatedly expressed their determination to stop it (e.g. QLS, SZ, vol. 31: 257; vol. 53: 424; vol. 78: 618), but as Liu Jiaju points out, the Qing court did not really abolish it until 1669 when the Kangxi emperor really took power and the fully abolishment happened in 1685 (Liu, 1964: 58-9). On May 2, 1647, the Qing rulers also had tried to stop Han from *touchong* (QLS, SZ, vol. 31: 257), but in fact it still existed during the Kangxi reign (Song, 1987) and it did not totally end until the Qianlong reign (Gu, 2003: 222).

insights. They hence incorrectly describe Shunzhi's attitudes towards the fugitive law.

Third, the adjudication of fugitive cases is weakly researched.⁸²

Most Chinese scholars' research place fugitive cases and the fugitive law under the Marxist discourse.⁸³ They (Liu, 1964: 91; Yang, 1979; Xu, 1983; Luo, 1986) generally discuss the fugitive law and fugitive problem under the transition from a “backward” system of slavery or serfdom to an advanced “feudal” society. The early Qing rulers imposed the “backward” social relation of slavery or serfdom on a relatively advanced “feudal” society. These scholars usually criticize the “backwardness” of the fugitive law before Kangxi personally assumed power. Scholars who did not recognize the legitimacy of Manchu law argue that during the Shunzhi reign the fugitive law was “a law outside the Qing code” (*fa wai zhi fa* 法外之法) (e.g. Zhou and Zhao, 1986: 330) or simply imperial fiat (Liu, 1964: 110-111). Many emphasize the severity of the fugitive law under the early Qing rulers, especially Dorgon and Shunzhi (Yang, 1979; Meng, 1981a; Xu, 1983) and sometimes Oboi (Xu, 1983; Wu, 2009: 76-7) and its relaxation under the Kangxi emperor and later rulers. Liu Jiaju, a scholar from Taiwan (under the rule of Republic of China),

⁸² A few scholars (e.g. Tani, 1989: 17-20) have mentioned the juridical procedures of fugitive cases, but they have not distinguished in different time periods or different places.

⁸³ Under Chinese Marxist definition, Manchus were in the slavery or serfdom society and Ming China was under the “feudal” society. Chinese “feudal” society consisted of two basic social classes: landlords and peasants. Peasants were not serfs and they enjoyed more “freedom” than serfs. Different from Europe, in Chinese “feudal” society, the power was centralized and held by the emperor, as the emperor generally opposed any nobles to have autonomous status. The social bases of Chinese “feudal” society were official-scholars (landlords) and relatively “free” peasants. Chinese “feudal” society was from 475 BCE to 1840 CE. Manchus were backward because the Qing dynasty still upheld a slavery or feudal serf mode of production. Some scholars (Xu, 1983; Luo, 1986) argue it was feudal serfdom system; some argue that it was slavery (Liu, 1964; Li, 1998). Yang Xuechen (1979) uses both slavery and serfdom. The difference between slavery and serfdom is important for Chinese Marxists but not for contemporary Han officials of the age. There was a master-slave or master-servant relation between the bannermen and their slaves. Such a relation was legally defined. Even though that the economic relation between them gradually became a relation between landlords and tenants, the nominally legal master-slave relation persisted till the end of the Qing. I hence will simply use slavery.

also emphasizes Manchus' determination of maintaining slavery and the severity of the fugitive law under the Shunzhi reign (Liu, 1964). Wu Zhijian (1996) also agrees that the fugitive law was the outcome of the slavery mode of production from Manchuria. He provides a detailed examination of the evolution of the fugitive law under the Manchu-first (*manzhou benwei* 满洲本位) policy and notices the emperor's embarrassing position between Manchu and Han in dealing with the fugitive law. These scholars usually do not consider the fugitive law from the perspective of legal history.

Among a few scholars who have looked at the fugitive law from the perspectives of the Qing juridical and political systems, Tanii Toshihito (谷井俊仁) and Wu Aiming (吴爱明) are worth noting. Tanii's article deals with the establishment of the *Dubu zeli* 督捕则例 (Regulations on the Bureau of Discipline and Supervising on Arrests). He argues that during the Shunzhi reign, Han officials intended to resolve the fugitive problem under the Han bureaucratic rule — define punishments in accordance with the crimes, while Manchus wanted to resolve the problem in society — catch fugitives and treat slaves benevolently. Resolving the fugitive problem in society required to change the social relation. Tanii indicates that only through reforming the Manchu society could solve the fugitive problem (Tanii, 1989: 9, 34). Wu's dissertation is the most comprehensive research on the fugitive law. He outlines the changes of the fugitive law (or the *Dubu zeli* as he calls) in detail. He argues that the evolution of the fugitive law demonstrates the change from the separation between Manchu and Han to the unification in Qing politics (Wu, 2009).

I too argue that the manner by which the Qing ruling house changed the fugitive law is a sign of sinicization. Han legal principles gradually influenced and prevailed over the fugitive law. I will reconstruct the evolution of the fugitive law and the mechanism in which the Qing court dealt with fugitive cases. Compared with previous scholars, my research is more empirically grounded. I will consider the emperor, Manchu officials and Han officials' attitudes toward the fugitive law. For example, why did Han officials so vigorously oppose the fugitive law? How did the Qing rulers from Dorgon to Oboi balance between Manchu and Han? How did the Shunzhi emperor particularly safeguard the Han people?

II. The Evolution of the Fugitive Law

This section outlines the history of the evolution of the fugitive after 1644 by focusing on the Shunzhi period. Because this dissertation is not a comprehensive study of the fugitive law, which has been done by Wu Aiming (2009), it will only focus on three most important aspects of the law: the punishments received by the fugitive, by the harbinger, and by the harbinger's neighbors. As the Manchu officials intended to establish a harsh fugitive law and to strictly implement it, Han officials opposed the fugitive law and managed to relax it. My research shows that all Qing rulers felt responsible for the wellbeing of all their subjects, Manchu and Han, and they must balance between the two major peoples. The fugitive law originally was a typical Manchu law but Han officials successfully persuaded the Qing rulers to abandon its Manchu principles and adopt Han ones. Emperor Shunzhi, not Kangxi, was the key Qing ruler who decided the direction of evolution of the fugitive law.

1. The fugitive law under the Dorgon Regency (1644-1650)

A. Imposing the pre-1644 fugitive law on Han (1644-1646)

The Qing court basically implemented the pre-1644 fugitive law in the first three years of the Shunzhi reign. Except one record in 1644 (NGDK, 038164; MQDA, A002-024) that states the harborer would be punished by the death penalty, the detailed content of the law was not clear. A record in the Kangxi *Daqing huidian* states that in the early Shunzhi period, the Qing court just implemented the law established by Hong Taiji for fugitive cases (KXHD, vol. 107: 5311).

A case indicates that the Qing jurists applied the pre-1644 fugitive law.⁸⁴ A provincial degree holder (*juren* 举人) from Shandong province (lived in Jingshi) harbored Erhaizi 二孩子 in 1644 and took him as a servant without checking Erhaizi's background. Erhaizi was actually a bannerman's slave. A bannerman reported this case. The Board sentenced that the *juren* committed the crime of harboring (a fugitive) and Erhaizi committed the crime of escaping. The Board sentenced the *juren* to decapitation and Erhaizi to fifty strokes of the whip plus hamstringing of his two feet. The court ordered Erhaizi to return to his original master. The court confiscated *juren*'s properties in Shandong province, including his two wives, one son, two female slaves, and six heads of cattle. The Board of Punishment memorialized this case to the Prince Regent on January 6, 1645. The Qing court had already executed the *juren* before sending this formal memorial.

⁸⁴ In another cases memorialized on the same day, two persons abducted two femal slaves. The Board of Punishment sentenced the both to decapitation (NGDK, 185037). In a case memoralized on January 24, 1645, a person also abducted banner women. The Board of Punishment sentenced him to decapitation plus comfiscation of his property (NGDK, 185037). At this moment, because the jurists applied the Manchu penal system, it is hard to know whether they jurists applied the fugitive law or other laws (either the Chinese or Manchu laws) in these two cases.

The Prince Regent approved it by saying “noted” (NGDK, 185037). The punishments, hamstringing with lashing with whips for the fugitive and death for the harborer, were of no difference from those in cases before 1644. This case also suggests that the court confiscated harborer’s property, including his family members. The Qing court applied confiscation among Han in a Manchu way. As discussed in the previous chapter, confiscation was nothing new for Han, but the Ming law only applied it for some very severe crimes like treason. This case indicates that the fugitive law imposed confiscation of the harborer’s property⁸⁵. Due to the limitation of the sources, we do not know whether the pre-1644 fugitive law included such a punishment, but it was very clear that the Qing court widely applied confiscation among harborers after 1644.

In short, the Qing court continued applying the fugitive law and it should be considered as integral part of Manchu law.⁸⁶ The Qing court simply imposed the fugitive law on both Han and Manchus. This imposition was just temporary however. The Qing soon added the fugitive law to the Qing code.

B The fugitive law as a Manchu law in the Qing code (1646 to 1648)

Some dramatic changes of the fugitive law occurred in 1646 when the Qing court initially relaxed the fugitive law but subsequently tightened it. According to an edict issued on June 17, 1646, the Qing court replaced the death penalty with lashes of the whip

⁸⁵ Archival cases show that a harborer's wives and children were also considered as the family head's property. This was almost an common understanding at the age.

⁸⁶ Some scholars argue that the fugitive law was a law outside of the Qing code or imperial fiat. This argument assumes the orthodox authority of the Qing code or the Ming code. However, Manchu law rather than the Qing code or the Ming code was the principal law that administered Manchus.

for harborers in early 1646,⁸⁷ because, as the edict states, the emperor could not bear the harsh death penalty for the harborers. However, with the application of this lenient regulation, tens of thousands of slaves fled in a few months and Manchu soldiers and generals vigorously opposed such a relaxed fugitive law (QSL, SZ. Vol. 26: 218). The Qing court decided to revise the fugitive law again. The Board of War quickly made a new version of the fugitive law (I call it the 1646 fugitive law) and imposed a very harsh punishment on the harborer⁸⁸ (QSL, SZ, vol. 26: 219).

After some revisions, the Qing court added the 1646 fugitive law to the first version of the Qing code in 1647. Both Zheng Qin and Tani Toshihito state that the fugitive law was in the first version of the Qing code as a formal statute. The statute was “hiding old or new fugitive slaves of Manchus” (Zheng, 1996: 148; Tani, 1989: 6).⁸⁹ As Su Yigong has pointed out, the fugitive law in the Qing code is very similar but not the same with the 1646 fugitive law recorded in the *Qing shizu shilu*. According to the statute, the harborer will be decapitated, his family property will be confiscated; the fugitive will be lashed with one hundred strokes of the whip and returned to his master; the harborer’s neighbors and community leader will be exiled to a frontier (*bianyuan* 边远) area and be

⁸⁷ A record (QCWXTK, vol. 195: 6601) indicates that this change occurred in the first year of the Shunzhi reign. But cases memorialized in the last lunar month of the first year of the Shunzhi reign show the Qing still applied the harsh fugitive law inherited from Manchuria. The *Qing shizu shilu* indicates that this change happened several months before the fifth month of the third year of the Shunzhi reign.

⁸⁸ The *Qing shilu* does not tell how harsh the punishment would be, but the Qing archival cases and the Qing code show it was death.

⁸⁹ In order to find the original copy of the 1647 Qing code, Su Yigong has carefully deduced the possible time when the Qing court added the fugitive law to the Qing code, but due to the limitation of his sources and his analytical methodology, he still concludes that the time was unknown (Su, 2000: 154-64). According to Su (2000: 154-7,164), we do not know the original copy of the 1647 Qing code, but the fugitive law in different versions of the Qing code are the same.

lashed by *one hundred strokes of the whip* (my emphasis); if the fugitive returns himself, the harbinger and his neighbors will be exiled. The statute also requires that a fugitive case has to be first reported to and be approved by the Board of War. It ended by saying that anyone who violates it will be excluded from any amnesties (cited from Su, 2000: 155-6). According to the *Qing shilu*, the punishment for the fugitives is the same; the neighbors and community leaders' punishment are the same but the responsible community leaders are different. The *Qing shilu* states that the harbinger will be punished harshly but no specific punishment is given (confiscation is the same); the *Qing shilu* does not mention the amnesty and the Board of War (Su, 2000: 158-60).⁹⁰

The 1646 fugitive law (or the fugitive law in the Qing code) clearly manifests the ethnic inequality between Manchu and Han. It imposed a very light punishment on fugitives (one hundred strokes of the whip) but very harsh punishment on harborers (death plus confiscation of property). Fugitives were mainly Manchu's slaves and ethnically Han origin. Harborers were basically Han too. Escapees received less severe punishment than harborers because Manchus needed slaves. Furthermore, the regulation also punished the harborers' community leaders and neighbors severely. The intention was very clear: maintaining the slavery system. The Qing court was so concerned with slavery that the statute even does not mention anything about cases of fugitive regular bannermen.

Archival cases demonstrated that the fugitive law was actually considered a statute of the Qing code by 1646 when the Qing code had not yet been promulgated. Even though not so strictly, the jurists sometimes referenced some part of the fugitive law as statutes or some others as substatutes. These references indicate that the fugitive law was part of the

⁹⁰ There are other differences between the Qing code and the *Qing shilu*, see Su (2000: 158-9).

Qing code or at least enjoyed similar status with statutes or statutes of the code (Hu, 2011b). Since the Ming code, which should have been applied by the jurists in 1646, made no mention of Manchu's slaves, the most reasonable explanation of such references is that the Qing court had decided to add the fugitive law to the Qing code.

Even though the fugitive law became a formal statute of the code and was slightly influenced by Han legal principles, it was still in many ways a Manchu law. The statute clearly defined a fugitive case as an immediate examining case, even if it happened outside Jingshi. This statute granted the Board of Punishment the power to adjudicate fugitive cases and excluded local officials.⁹¹ It demonstrated the influence of the Manchu juridical system.⁹² Also, the harborer's neighbors and community leader will receive a punishment of exile *plus one hundred strokes of the whip* (my emphasis). The Qing ruler had already decreed that Han should be punished by beating with bamboos and had applied punishment of lashing with whips among bannermen. Such a statute actually imposed the Manchu penalty of whipping on Han, and the court did apply this penalty among Han offenders (e.g. NGDK, 087564). The punishment of exile surely indicates the influence of China's five punishments. But overall, the fugitive law was still a Manchu law.

Adding the fugitive law to the Qing code did not conflict with the Qing intention of adopting a segregation policy⁹³ in the juridical area. The fugitive law was one of the few statutes (the only one in 1647) drawn from Manchu law. The fact that the fugitive law

⁹¹ As I will discuss next, some exceptional cases did exist but they were very unusual and some of them were conditioned.

⁹² This is because Jingshi was considered the home place for all bannermen. By following the Han system, cases outside Jingshi should have been considered first by local officials.

⁹³ Again, the Qing court's intention to apply a segregation policy in the juridical area was never successful.

became a formal statute of the Qing code does not impair my explanation that the Qing intended to apply Manchu law among bannermen and the Qing code (also the Ming code before 1647) among civilians because the Qing definitely applied the fugitive law among both Manchu and Han. After adding the fugitive law to the Qing code, jurists could apply a statute of the code rather than an article of Manchu law to punish Han offenders for fugitive cases.

Adding the fugitive law to the Qing code was a major failure for Han officials. It was not hard to imagine how vehemently the conflict between Manchu and Han officials in 1646 was. From Han officials' perspective, the 1646 fugitive law was unjust since harborers as well as their neighbors — they mostly were ethnic Han — were the major victims. The Qing throne not only imposed the unjust fugitive law (from Han officials' perspective) on the Han people and even added it into the code. The legislation demonstrates that slavery was the basis of the Manchu society, and that Manchus tried to retain the harsh fugitive law.

C. The fugitive law as a Qing law (*qingfa* 清法)

When Dorgon, as the protector of Manchus, prohibited anyone from discussing the fugitive problem in 1646, he might have hoped that the fugitive law could have been permanent by adding it to the code. Dorgon however also must act as the ruler of Han. The fugitive law was never stabilized under his rule. Hence, the fugitive law as a formal statute was short lived. After 1648, the fugitive law was not a statute in the code any more even though the original statute itself was still in the Qing code.

In 1648, the Qing slightly changed the fugitive law whereby it actually abolished its status as a formal statute of the code. The change was that the harbinger's neighbors will be punished by exile plus forty actual blows of the heavy bamboo (KXHD, vol.107: 5325) instead of exile plus one hundred strokes of the whip as the Qing code stipulates. Such a revision was very trivial in terms of the punishment itself. It shows the influence of the Han legal principles. Forty actual blows of the heavy bamboo equalled one hundred strokes of the whip. The only distinction is that the former targeted on civilians and the latter on bannermen. Because the Qing court abolished the Manchu penalty of whipping among Han, this revision actually terminated the fugitive law's status as a statute.

After the 1648 revision of the fugitive law, the Qing government punished the harbinger's neighbors by exile plus forty actual blows of the heavy bamboo instead of exile and one hundred strokes of the whip. The earliest case I read from July 29, 1648 (NGTB, 2087-9). In another case in which a woman Liu Shi hid her son and her son later returned to his master himself, both Liu Shi and her neighbors received a punishment of exile plus forty actual blows of the heavy bamboo (NGTB, 2087-21). Also in many other cases (e.g. NGDK, 087736, 087737), the jurists applied the new revision instead of the fugitive law in the Qing code. Many versions of the Qing code after 1648 retained the 1646 fugitive law, but in practice, the jurists implemented the newly endorsed fugitive law.⁹⁴

A general amnesty in 1648 also demonstrates that the fugitive law was not a statute any more. On December 24, 1648, the Qing decreed an amnesty that states if fugitives,

⁹⁴ Since the new regulation did not fully change the fugitive law, other corresponding article in the Qing code was still applied in 1648. For example, harborers were still punished by death (e.g. NGDK, 161945) before 1649. The Liu Shi case also demonstrated that a harbinger was still punished by exile if the fugitive returned home himself, a punishment accorded to the fugitive law in the code.

who flee before the amnesty, return themselves during a grace period, the harbinger, the harbinger's neighbors and community leaders shall be exempted from punishment (QSL, SZ, vol. 41: 328, 330). This amnesty actually conditionally pardoned the harbinger. The 1646 fugitive law in the Qing code states offenders in fugitive cases are excluded from any amnesty. The 1648 amnesty supports that Dorgon did not follow the fugitive law in the Qing code any longer.⁹⁵

The fugitive law was not a statute in the Qing code can be further supported by its change after 1648. In 1649, the Qing revised the 1648 fugitive law in order to balance Manchu and Han. The 1649 law stipulates that if a fugitive was reported by others or recognized by his or her master, the harbinger would be exiled instead of death. The harbinger's two adjacent neighbors would be punished by thirty actual blows of the heavy bamboo, the head of the ten household by twenty blows. But if the fugitive returned himself or herself, the harbinger and the harbinger's neighbors and community leaders should be exempted from punishment (QSL, SZ, vol. 43: 345-6). Dorgon explained his hard position between Manchu and Han. First, the harsh 1646 fugitive law was a response to Manchu soldiers and generals' request because Manchus took their slaves through battles and their request was reasonable. Second, after Dorgon thought the 1646 law over, he deemed it was too harsh, so he relaxed the fugitive law (QSL, SZ, vol. 43: 345).

In archival cases, after the fourth lunar month of the fifth year of the Shunzhi reign (1648), the jurists sometimes referenced the fugitive law as a *qingfa* or Qing law (e.g. NGDK, 087722, 087737). This is a very appropriate term to describe the fugitive law after

⁹⁵ An amnesty in August 25, 1647 did not mention the fugitive cases (QSL, SZ, Vol. 33: 272). The reason should be that such cases were automatically excluded in accordance with the Qing code.

1648. The changes from Manchu law (before 1646) to a statute of the Qing code (1646-48) and to a Qing law see the diminishment of Manchu legal principles and the increase of Han ones.⁹⁶ The most significant change lies in penalty. When Dorgon decided to punish harborers by whipping instead of death in the early 1646, the fugitive law still followed the Manchu penal system⁹⁷ and the Qing court imposed a Manchu penalty of whipping on Han. The Qing adopted the penalty of exile in the 1646 fugitive law and of beating with bamboo (substitute for whipping) in 1648. These changes manifests the increasing influence of Han penal system of five punishments.

2. 1652: Shunzhi's voice on the fugitive law

After Dorgon died in 1650, Manchu nobles headed by the former co-regent Jirgalang actually continued to rule the realm because the Shunzhi emperor was just fourteen *sui*.⁹⁸ The Manchu nobles strictly enforced the 1649 fugitive law without revision until 1652.⁹⁹ According to Wakeman's description (1985: 928), in terms of the crown-nobility conflict, Shunzhi became a monarch in his own right in the last months of

⁹⁶ I have to admit that by calling it a Qing law, jurists probably thought it as a law from Manchuria. My perspective is that the law was gradually influenced and prevailed over by Han legal principles after 1644.

⁹⁷ One hundred strokes of the whip was one degree reduction from death penalty in accordance with the Manchu penal system in 1646.

⁹⁸ In traditional China, a person is one *sui* at birth. The actual age is one or two years younger than Chinese *sui*. Fourteen *sui* should be twelve or thirteen years old.

⁹⁹ One example is that they continued excluding harborers from general amnesties. On February 1, 1651, a general amnesty marking Shunzhi's ascension to the throne excluded harborers of fugitives along with those guilty of rebellion, treason, sons or grandsons killing parents or grandparents, wives or concubines killing or suing husbands, slaves killing masters, and murder (QSL, SZ vol. 52: 410). This amnesty, even though did not change the harborer's punishment itself, showed a strict implementation. Other crimes excluded by the amnesty like treason, murder and many others all concerned the social bases in imperial China. The fact that the Qing categorized hiding fugitives as a crime excluded from the amnesty indicates that the Manchu nobles considered the fugitive problem related to basis of social order. On October 4, 1651, another amnesty also excluded harborers (QSL, SZ, vol. 59: 470).

1651. From 1652 on, Shunzhi gradually dominated the Qing government (Zhao, 2007: 96-97) and he began to positively respond to Han officials' requests of revising the fugitive law.

On June 2, 1652, Liu Yuyou advised the emperor to differentiate a harborer who had a parent-son relation with the fugitives from those who did not. According to Liu, if parents hid their son, or vice versa, the offender should have been punished leniently. The emperor ordered relevant yamens to discuss Liu's suggestions (NGDK, 006582; MQDA, A014-094; QSL, SZ, vol. 64: 504-5). This is not an event without significance. Liu clearly delivered a message that the current fugitive law violated Confucian orthodoxy. Liu must know that Dorgon had issued the edict to prohibit anyone from discussing the fugitive law. Though the Qing throne dishonored Dorgon, the importance of slaves to Manchus had not gone away. Liu dared to deliver such a memorial and he was not punished. Even more, the emperor praised him. The imperial rescript says Liu's suggestions were related to the "great task of pacifying the realm." The most logical explanation is that the young Shunzhi emperor had begun to voice his political opinions on the fugitive law and he tended to care about the Han people.

On July 1, 1652, the Qing court decreed a revised fugitive law. The new law did not adopt Liu's suggestion but surprisingly punished fugitives more severely. It punished first-time fugitives by whipping and second-time fugitives by death. As discussed above, the death penalty was a possible punishment for the fugitive before 1644. Qing records including archival cases show that from 1646 to 1652, the court punished fugitives only by whipping. The 1652 fugitive law also punished harborers by enslavement instead of exile and the harbor's neighbors by forty actual blows of the heavy bamboo. If the fugitive fled

for the first time, the harbinger would be enslaved and given to the fugitive's master. If he fled for the second time, the harbinger would be enslaved and given to the Board of Revenue or the state. In any case, the harbinger's family property would be confiscated (QSL, SZ, vol. 65: 508).¹⁰⁰

Therefore, the 1652 fugitive law satisfied neither Manchu nor Han, but to some extent, it mollified both. Han legal tradition distinguished between principals and accessories and felt that punishment should be commensurate with the crime. For Han officials, the changes in sentencing were a step toward balancing the crime with the punishment. For Manchu officials, the punishments that the harbinger received (enslavement and confiscation) provided a source of new slaves.

3. Struggle and balance: the fugitive law from 1653 to 1660

After 1652, Shunzhi's attitudes toward the fugitive law and Han culture in general encouraged Han officials to propose revisions to the fugitive law. As a Manchu, Shunzhi

¹⁰⁰ According to Liu Yuyou, this 1652 fugitive law had two contradictory versions. One was in Chinese character, which states that the harbinger himself and his *own* (my emphasis) property would be enslaved or confiscated. The other one was in Manchu character, which states not only the harbinger himself but his *whole* (my emphasis) family property would be enslaved or confiscated. The contradiction came from the different and complicated understanding of the term *jia* or family. According to Liu's understanding of the Chinese version, once a person committed the crime of hiding fugitives, only he and his own property—his wives (also his own children) and other property—would be enslaved or confiscated and be given to the fugitive's master. However, as Liu argued, according to the fugitive law in Manchu version, the Qing would confiscate the harbinger's whole family property and give them to the fugitive's master—not only the harbinger's own wives and children but also his parents, his brothers, his brothers' wives and other property like houses. Such a fugitive law in Manchu version heavily violated Confucianism. As Liu protested, “could parents be a son's property?” “Could brothers' wives be a person's property?” Could an unmarried but engaged girl still be her father's property? Liu was the president of the Board of Punishment and he pointed out that because of such a contradiction, jurists did not know to follow which version. The Qing partly accepted Liu's protest and revised the fugitive law on October 17, 1652. The new law states that only the harbinger's own family property should be given to the fugitive's master and the harbinger's father or sons and brothers should not be implicated if they did not know the story and the family had been divided (QSL, SZ, vol. 68: 537).

however could not go too far to relax the fugitive law. Manchu nobles fought back and in 1654 they forced Shunzhi to endorse a very harsh fugitive law. Different from previous scholars who argue that Shunzhi treated Han very harshly, I argue that Shunzhi actively protected Han. By applying Han legal principles, Shunzhi successfully suspended the 1654 fugitive law and abolished it in 1657. The practice and revision of the fugitive law after 1654 were basically propitious for Han.

Then, why did Han officials oppose the fugitive law? Why did they publicly oppose it after 1652? How did Shunzhi maintain balance between Manchu and Han? How and why did Shunzhi apparently stand for Manchus in 1654 but actually protect Han after 1654? What was Shunzhi's role in the evolution of the fugitive law?

A. Why did Han officials oppose the fugitive law?

Han officials never directly opposed slavery itself, and they opposed the fugitive law because it violated officials and commoners' interests by protecting slavery. Neither slavery nor coercive labor was new to officials in imperial China. Slaves always existed but were never a main social class at least in the Ming dynasty. As Xue Yunsheng has noticed, civilians or Han people also had slaves, but there was no special law to deal with their escaped slaves (DC, bu042.01, commentary). The social base of imperial China was scholars, peasants, artisans, and merchants. Manchus considered slaves as necessities of banner society and treated crimes of hiding fugitives as an unpardonable crime excluded from any amnesties. For Han officials, slaves were not so important and hiding slaves was not such a severe crime at all. According to Han officials' opposition as seen in some

memorials from 1652 to 1655, the fugitive law violated the following three principles, Confucianism, equality of law, and legitimacy of the Qing rule.

The fugitive law sometimes violated Confucian family ethics. The fugitive law incriminated anyone who hid his parents or children regardless the Confucian principle that required everyone to cover his children or parents' crimes. Both the Ming and Qing codes clearly upheld this Confucian principle, and this principle excluded only crimes like rebellion or treason (DMLF, vol. 1: 214-215; DQLJJ, vol. 28: 415-6). Liu Yuyou clearly stated that cases in which a harbinger hid his parents or sons should be treated differently. The Qing throne nevertheless overtly proclaimed that hiding fugitives was a crime excluded from amnesties and actually treated it as a crime similar to rebellion or treason. Clearly, Manchus considered that slavery was superior to Confucian family ethics; Han officials, on the contrary, considered the Confucian principle was superior to slavery.

As one of the basic tenants of Confucianism is social harmony, the social unrest caused by the fugitive law created unease within larger Han society. First, the fugitive law implicated too many persons. Harborers, their neighbors and community leaders, and the responsible local officials all could be implicated. Just as Li Yin stated, the fugitive law was so harsh and so comprehensive that all persons in the realm, regardless of the rich or the poor, the honorable or the mean, officials or commoners (*min* 民), worried about themselves and their families (QSL, SZ, vol. 88: 695). Second, the fugitive law was so strict that nobody, including local officials, dared to accommodate or relieve any “drifting

people” (*liumin* 流民) caused by natural disasters (QSL, SZ, vol. 77: 607; vol. 88: 696; vol. 90: 705).¹⁰¹

The fugitive law violated Confucianism by damaging the social hierarchy. In imperial China, slaves weighed much less than officials and commoners (peasants, artisans, and merchants). The fugitive law, however, intended to maintain slavery by sacrificing officials and commoners. Li Yin described that “the misfortune [of harborers and implicated persons] originates from slaves and so the proper status hierarchy (*mingfen* 名分) has been swept away” (QSL, SZ, vol. 88: 695). The fugitive law imposed similar or same punishments on people from different social statuses, which also blurred Confucian status distinctions. One typical example was the punishment for licentiates (*shengyuan* 生员). On February 26, 1654, Chen Zhongjing 陈忠靖, who was the Secretary of Office of Scrutiny for Justice, opposed the Qing imposing confiscation on licentiates by arguing that licentiates should be treated differently from commoners in accordance with the Confucian status hierarchy (NGDK, 088363-001).¹⁰² The 1654 fugitive law however still treated licentiates as commoners. Before 1654, the fugitive law did not distinguish between commoner and official harborers.¹⁰³ Even though the 1654 fugitive law imposed

¹⁰¹ Besides the two example that Han officials mentioned, the fugitive law also caused social disorder in other ways. For example, as the Shunzhi emperor admitted, the fugitive law once “encouraged” ruffians to blackmail innocent commoners (QSL, SZ, vol. 85: 674).

¹⁰² The emperor, as was routine, forwarded the relevant yamens to discuss Chen's memorial. At this moment, the emperor did not punish any officials who made suggestions on the fugitive law. Probably after the emperor showed his inclination toward a harsh fugitive law, a censor accused Chen of exculpating the licentiate Lü Huang by making such a suggestion. The emperor ordered princes and ministers to consider Chen's offense. Chen disputed that he even did not know who was Lü Huang when he made such a suggestion (NGDK, 088362). The princes and ministers recommended to dismiss Chen. On November 4, 1654, the emperor decided to demote him instead of dismissal (QSL, SZ, vol. 86: 679).

¹⁰³ In 1650, the court executed Guangxi governor Guo Zhaoji 郭肇基 because he harbored fugitives (QSL, SZ, vol. 49: 392).

different punishments toward commoners and officials, officials and their family members also received the punishment of exile—just one degree less severe than death.

The fugitive law violated Han understanding of equality of law¹⁰⁴ by imposing different punishments on fugitives and harborers. On March 14, 1654, Wei Guan 魏琯, the junior vice-President of the Supervisory Yamen on Arrest, stated, “the fugitive who has fled at first or second time is only punished by one hundred strokes of the whip, but the harborer is punished by confiscation. [The punishment] is light for fugitives but heavy for harborers.” Wei argued that such different punishments violated equality of law (QSL, SZ, vol. 80: 633). When a person hides a fugitive, the fugitive shall be the principal and the harborer the accessory. The fugitive law, however, punished the supposed principal lightly while the accessory severely.

The fugitive law further endangered Qing legitimacy among the Han people. By implementing the fugitive law, the Qing rulers worked as protectors of slavery for Manchus. In imperial China, scholar-officials expected emperors to protect his subjects (scholars, peasants, etc.) rather than someone's slaves.¹⁰⁵ When Wei Guan opposed the confiscation (enslavement) punishment in the fugitive law, he clearly stated that “aren't all people in the realm the 'sincere children' (*chizi* 赤子) of the court? Once a family is punished with enslavement today, the community will lose the family; once a person is punished with enslavement tomorrow, the realm or the state will lose the person” (HQZY,

¹⁰⁴ This was mostly from the legalist tradition. Crimes and punishment should accord. Tanii (1989: 8-9, 25) has analyzed that Han officials opposed the fugitive law through attacking its injustice or the imbalance between crimes and penalties. He argues that Han officials managed to relax the fugitive law by fractionizing the ingredients of the crime. Tanii however fails to consider the role of Confucianism.

¹⁰⁵ In China's long history, the emperor had been struggled with numerous nobles over controlling the population. Emperors usually opposed nobles to control other people.

vol. 7: 30b). Li Yin also held similar opinion that every victim of the fugitive law was the loss of the court and loss of persons meant loss of tax payers (QSL, SZ, vol. 88: 695). For Han, the Qing ruler's protection of Manchus' slaves was alien and questioned the Qing legitimacy.

In sum, by drawing upon Confucianism and the Han notion of equality of law, Han officials suggested the emperor act as the ruler to all under Heaven instead of implementing the fugitive law for the interest of Manchus.

B. The struggle over the fugitive law (1654 – 1655)

The Han officials' opposition to the fugitive law, at least from the Manchus' perspective, encouraged slaves to escape. In other words, Han officials' opposition of the fugitive law actually attacked the slavery. The struggle between Manchu and Han officials was inevitable. As the Qing ruler, Shunzhi tried to balance Manchu and Han. As an admirer of Zhu Yuanzhang, Shunzhi tolerated many Han officials' opposition to the fugitive law after 1652. Han officials as a group always opposed the fugitive law, but only after 1652 when the emperor showed his great interest in Han culture, did so many Han officials speak out about their political views on the fugitive problem and so dramatically attack the fugitive law. In 1653, the Shunzhi emperor restored many Ming juridical systems, but the fugitive law experienced little change.¹⁰⁶ In 1654, when Han officials put forward more dramatic steps to revise the fugitive law, Manchu officials' dissatisfaction accumulated and they fought back.

¹⁰⁶ One change was that the Qing court decided to sentence fugitives to death only if they fled three times (QSL, SZ, vol. 75: 594).

Wei Guan¹⁰⁷ was the most active opponent of the fugitive law in 1654. On, March 14, he suggested abolishing the punishment of confiscation (QSL, SZ, vol. 80: 633). Wei delivered this memorial when the Qing court had in many ways adopted the Ming juridical system and abolished the punishment of confiscation for banditry. The 1652 fugitive law that was still effective in 1654 still imposed confiscation or enslavement¹⁰⁸ on harborers. Wei's legitimacy was the justice or equality of law. Like Liu Yuyou, Wei received no punishment for opposing the fugitive law, most probably because of Shunzhi's policies of adopting Han systems and because of his admiration of Han culture. The Qing partly adopted Wei's suggestion by revising punishments for harborers — exile to Shengjing instead of enslavement.¹⁰⁹

Shunzhi raged when Wei Guan further opposed the fugitive law. On July 19, 1654, taking advantage of Summer Assizes, Wei suggested that the emperor exempt the harborer's family members from exile to Shengjing if the harborer had been dead. Shunzhi replied, "Manchu housemen were taken by generals and soldiers in previous reigns through bloody battles, so the ban of hiding fugitives is very strict. In recent years, [the punishment of hiding fugitives] has been reduced several times and now the punishment is just exile. Moreover, the fugitives are tens of thousands, but less than one tenth of those were caught. The Supervisory Yamen on Arrests has repeatedly memorialized [the situation]. Wei Guan clearly knows this, how can he still ask to reduce the punishment?" The emperor ordered members of the Deliberative Council, the Nine Ministries (*jiuqing*

¹⁰⁷ Wei Guan was the junior vice-President of the Supervisory Yamen on Arrest.

¹⁰⁸ Confiscation of a harborer meant enslavement. Confiscation was one origin of slaves in the early Qing.

¹⁰⁹ However, harborer's properties were still confiscated and the harborer's family members were also exiled to Shengjing—a way to repopulate Manchuria after many bannermen had moved to China proper since 1644.

九卿) and other various capital officials to jointly try Wei Guan and to severely punish him (QSL, SZ, vol. 84: 658). The jurists headed by Jirgalang stated that Wei's suggestion aimed to have all Manchus' slaves escape, and they sentenced him to strangulation. On July 25, 1654, the emperor received the recommended judgment. While admitting the sentence's legitimacy, Shunzhi commuted the death sentence and just demoted Wei by three degrees and transferred him to another post (QSL, SZ, vol. 84: 659).

The emperor's actions were not capricious. It was not difficult to imagine the tension between Han officials like Wei Guan and Manchu nobles headed by Jirgalang.¹¹⁰ Shunzhi's numerous policies of adopting the Ming systems violated Manchu interests, but the fugitive issue was definitely one focus that enraged both Han and Manchus. The Shunzhi emperor tolerated Han officials who made suggestions on the fugitive law and partly adopted their suggestions, but he did not dramatically change the law — he must keep balance between Manchu and Han. Wei Guan's suggestion during the Summer Assizes probably touched the flimsy balancing pole. The light punishment Wei Guan actually received nonetheless tells that Shunzhi just wanted to release a signal of admonishment to Han officials. Such an admonishment could also to some extent comfort Manchus.¹¹¹

The struggle was not over. On September 24, 1654, Shunzhi decided to exile Wei Guan to Shengjing because the court reexplained Wei's request of reducing the harbinger's punishment. Licentiate Lü Huang 吕煌 from Dezhou accounted for the new explanation.

¹¹⁰ The relation between Manchu and Han officials was very strained from 1653 to 1656. In April, 1654, the emperor executed Chen Mingxia, one of his most cherished Han literati and high officials, at least partly because Chen tried to restore the Ming hair and dress styles.

¹¹¹ On August 4, 1654 when the Qing court promulgated another general amnesty, the Qing reaffirmed that hiding fugitives was an unpardonable crime (QSL, SZ, vol. 84: 663).

Lü Huang hid a fugitive and had an official Lü Xiaozhong 吕献忠 bribe the fugitive's master to cover this case but the fugitive's master disclosed the story anyway. Lü Huang received a punishment of exile to Shengjing. The Board of War considered Lü Xianzhong's offense, and it suggested a light punishment for Lü Xianzhong. The emperor dissatisfied with the Board's sentencing and ordered the Deliberative Council to try the case. The outcome was that numerous officials at the Board of War including both Manchu and Han officials received administrative punishments and a few were even deprived of their posts. But Wei Guan received the most severe punishment as Shunzhi alleged that Wei Guan's request of reducing the harborer's punishment was “obviously for the sake of Lü Huang.” He exiled Wei to Shengjing (QSL, SZ, vol. 85: 672-3).

Very soon, on September 27, 1654, by pointing out the fact that more than thirty thousand slaves escaped in one year but less than one tenth were caught, Manchu nobles requested to revise the fugitive law and to punish harborers more severely. Shunzhi ordered both Manchu and Han officials to collectively consider the revision (QSL, SZ, vol. 85: 673). Manchu officials obviously dominated the revision and according to the newly recommended fugitive law, the harborer's family members would be enslaved and be given to the fugitive's master, the harborer's neighbors would be exiled, and the responsible officials would also receive harsh punishments. On October 7, 1654, the Shunzhi emperor rejected this recommended version and ordered officials to revise it again because he would not punish offenders so severely (QSL, SZ, vol. 85: 674). Shunzhi's refusal reflects his reluctance to adopt a harsh fugitive law.

Clearly, Shunzhi on the one hand, admonished Han official not to go too far; on the other hand, did not want to punish harborers as severely as Manchu officials requested.

Such an attitude of sitting on the fence, however, did not in any sense alleviate the intensified conflict between Manchu and Han officials. In a few days, he finally sided with the Manchu position. On October 12, 1654, Shunzhi mentioned a memorial from Yi Yonggui 宜永贵 who was the governor of Nangan (*Nangan xunfu* 南贛巡抚) when he summoned both princes and important Han officials. Yi Yonggui, as a *Hanjin* bannerman and a high official, stated that many Manchus' slaves fled but few were caught and he advised to adopt the original version¹¹² of the fugitive law. By citing Yi's memorial, Shunzhi criticized that Han officials wanted all Manchus' slaves fled by lightly punishing harborers (QSL, SZ, vol. 86: 675-6).

On October 15, 1654, the emperor approved a revised fugitive law that overwhelmingly reflected Manchu interests. Shunzhi approved such a harsh fugitive mostly because Manchu nobles and officials headed by Jirgalang imposed tremendous pressure on him. The newly approved fugitive law was extremely harsh—just a little less harsh than the 1646 version and it indicated a triumph of Manchu: Han commoner harborers would be executed, their neighbors would be exiled plus forty actual blow of the heavy bamboo; first and second-time fugitives would be lashed by 100 strokes of the whip and the third-time fugitives be executed. This 1654 fugitive law was also more comprehensive than ever before (QSL, SZ. Vol. 86: 676-8). The law further consolidated its consistent theme — maintaining slavery.

One characteristic of the 1654 fugitive law was that it clearly stipulated the situation in which Manchus' housemen or slaves¹¹³ hid fugitives. The Manchus' slaves

¹¹² It probably referred to the harsh 1646 fugitive law which was once a statute of the Qing code.

¹¹³ The Kangxi *Daqing huidian* uses *qixiaren* or persons under the banner system, which indicates that this regulation was applied among all bannermen, not just slaves (KXHD, vol. 107: 5329).

who hid fugitives, however, received a very light punishment (one hundred strokes of the whip with a fine). Before 1654, the Qing court punished Manchus' slaves who harbored fugitive with a fine (Liu, 1967: 1058). The light punishment for Manchus' slaves indicates that Manchus did not want to lose any slaves — even including those who committed the crime of hiding slaves.

Shunzhi's promulgation of such a very harsh fugitive law did not stop officials' opposition. On February 26, 1655, Manchu¹¹⁴ official Tulai (屠赖 Mh: Tulai), who was a chief censor of the Censorate, attacked the fugitive law. He stated that the fugitive law was not just or fair and advised the emperor not only to revise the fugitive law by punishing fugitives more severely and harborers less severely but to rehabilitate the punished Han officials like Wei Guan. Shunzhi ordered the Deliberative Council, Nine Ministeries, and other capital officials to discuss Tulai's suggestions (QSL, SZ, vol.88: 694). In response to the emperor's order, Li Yin 李裯, the junior Secretary of Office of Scrutiny for Military (*bingke you jishizhong* 兵科右给事中) vehemently attacked the fugitive law by emphasizing its harm in practice on March 2. Shunzhi ordered the Deliberative Council to consider Li's memorial (QSL, SZ, vol.88: 695-6).

Neither the emperor nor the Manchu nobles headed by Jirgalang could tolerate such attacks. On April 13, 1655, after another Han official made suggestions on the fugitive law, the Shunzhi emperor issued a long edict to show his determination and legitimacy to implement the current fugitive law. In the long edit, he proclaimed that both Han and Manchu were his “sincere children” and he did not favor any side. He then

¹¹⁴ It is worth noting that the struggle over the fugitive law was largely between Han and Manchu, but some officials could speak for the other side.

explained the necessity of the harsh fugitive law. First, Manchu generals and soldiers took slaves through bloody battles. Second, it was slaves who cultivated the land and herded the horse for Manchus. Third, he understood that Han suffered from the fugitive law, but if the fugitive law had not been harsh, all slaves would have escaped, leaving Manchus without a source of revenue. Lastly, he criticized officials who attacked the fugitive law by stating that “if [you] could make a less strict fugitive law to prevent slaves from escaping, is it not great? You however do not have the wisdom to make such a law.” The emperor even applied an absurd logic to legitimate the fugitive law by arguing that since Manchus saved Han from the turmoil of peasant rebellions, Han should be considerate of Manchus on the fugitive problem. The emperor admonished officials who conceived different opinions and ordered the Board of War to promulgate this edict in the realm (QSL, SZ. Vol. 90: 705-6). On April 15, 1655, Shunzhi further prohibited anyone from discussing the fugitive problem and he would severely punish anyone who dared to present a memorial related to fugitives (QSL, SZ, vol. 90: 707). This prohibition temporarily ended the struggle.

Such an end brought a tragedy to Li Yin. The Deliberative Council headed by Jirgalang sentenced him to exile to Ningguta 宁古塔 plus forty actual blows of the heavy bamboo. The Deliberative Council stated that such a sentence was a leniency considering the fact that Li delivered the memorial in response to the emperor’s order. Otherwise, as the council clearly stated, he should have been executed because his offense was really evil. The emperor commuted Li’s punishment of beating with the heavy bamboo to a fine

and exiled him to Shangyangbao 尚阳堡 instead of Ningguta.¹¹⁵ This was a typical political case and the law (the Qing code) itself became unimportant when the Qing court determined to punish the Han official anyway (QSL, SZ, vol. 90: 712).¹¹⁶

The Shunzhi emperor who then firmly took charge of the court and in many ways determined to reinstate the Ming system acted as a loyal protector of Manchus on the fugitive problem. Different from Chinese emperors in the previous dynasties, Shunzhi's power source was in many ways from Manchus. He must care about Manchus' economic interest. Since nobody could find a way to please both Manchu and Han, the only way to protect Manchu's interest was a harsh fugitive law.¹¹⁷

C. The Shunzhi emperor's rebalances (1654-1660)

The Manchu nobles pushed Shunzhi too far by promulgating the harsh 1654 fugitive law. Shunzhi rebalanced the pole thereafter. Previous scholars simply describe that the Shunzhi emperor stand for Manchus in 1654 (e.g. Zhou and Zhao, 1986: 332; Liu, 1073-4; Wu, 2009). Wu Zhijian (1996: 96-97) has noticed that Shunzhi served as a balance power between Manchu noble and the Han officials, but he does not consider

¹¹⁵ Ningguta was farther than Shangyangbao.

¹¹⁶ The jurists headed by Jirgalang stated that there was no exact article in the Qing code for Li's offense but what Li said was really evil, so Li should have been sentenced to death. I did not find how the Qing sovereign considered the Manchu Tulai for his adventurous memorial, but Qing records (e.g., NGDK, 155797; 086503) show that he was still the chief censor at the Censorate.

¹¹⁷ Some argue that Shunzhi was forced to approve such a harsh fugitive law because of the Manchu nobles' pressure and such an action reflects that the emperor's power was weakened (Meng, 1981a: 29). The approval of the harsh 1654 fugitive law did not necessarily indicate that the emperor's power was weak. It is very important to note that the Shunzhi emperor lived in the early Qing when Manchu traditions were very strong and that he needed Manchu soldiers to fight against the Southern Ming forces. He must care about Manchus. What Shunzhi did before and after 1654 clearly demonstrates that he was powerful enough to manipulate the Manchu nobles. But definitely, according to Manchu nobles, Han officials went too far to relax the fugitive law and too many slaves escaped from 1653 and 1654.

Shunzhi's deeds in the implementation of the 1654 fugitive law. What Shunzhi did and said after 1654 demonstrates that he cared about the Han people and did not totally side with Manchus.

The 1654 fugitive law usually punished harborers by strangulation after the assizes. These harborers' final destiny would be decided at the Court Assizes, but in practice from 1654 to 1657, the emperor executed few harborers, if at all, because he smartly or slyly applied various Han legal principles initiated by either Shunzhi himself or by Han officials.

First, the emperor decreed a general amnesty on December 24, 1654 (QSL, SZ, vol .87: 684) and this amnesty conditionally pardoned harborers. If a harborer hid fugitives before December 24 and the trial had not been finished, he would be exempted from punishment; if he hid fugitives after that date, he still would be punished in accordance with the fugitive law. The Qing court directly exempted some harborers from punishment. For example, on April 22, 1655, the Three High Courts memorialized a fugitive case in which the jurists exempted the harborer from punishment in accordance with this amnesty (SZTR, 76-86).

Second, during the Summer Assizes period, the emperor could reduce a harborer's death penalty after the assizes. On July 27, 1655, the Three High Courts memorialized a case in which Han commoner Ye Da hid a fugitive. Han and Manchu jurists in the Three High Courts had different opinions toward Ye Da. The Manchu jurists sentenced Ye Da to strangulation after the assizes in accordance with the fugitive law (the law itself was not cited). The Han jurists, however, argued that because Ye Da did not know the fugitive's identity when he accomodated him, Ye Da's situation was worth sympathy. Han jurists further stated that, accordent to the regulation of the Summer Assizes, a major criminal

(*zhong fan* 重犯) deserving compassion should be memorialized to the emperor for consideration. The Han jurists suggested a punishment of exile to Ningguta 宁古塔 with actual forty blows of the heavy bamboo. Shunzhi approved the punishment proposed by the Han jurists and exiled Ye Da to Ningguta (NGDK, 087597).

Third, the emperor suspended the Autumn Execution (*qiu jue* 秋决)¹¹⁸ in 1655. This was a *xuxing* 恤刑 year or “the year of commiserating penalties.” On August 26, 1655, the emperor decided to suspend Autumn Execution in the provinces because officials in the provinces had not finished the review (QSL, SZ, vol. 92: 728). Such a decision had not affected convicted harborers since they were reviewed during the Court Assizes. On September 18, 1655, a senior Chief-censor of the Censorate Gong Dingzhi 龚鼎孳 advised that provinces or *wai* and Jingshi or *nei* should follow the same rule, so the Autumn Execution should also be suspended in Jingshi. The emperor agreed and decided that in any *xuxing* year, the Autumn Execution would be suspended and this decision became a precedent (QSL, SZ, vol. 93: 731). According to a memorial delivered by the Board of Punishment on October 5, 1655, the Qing still carried out the Court Assizes but did not execute the criminals categorized under *qingshi* 情实 or “circumstances deserving execution” that year, and the court would execute them next year (NGDK, 006140).

Fourth, the emperor surprisingly suspended the Autumn Execution again in 1656. On September 26, a Han censor Yu Tu 俞铎 advised the emperor to suspend the Autumn Execution in order to extend the imperial benevolence. Shunzhi had relevant yamens

¹¹⁸ Criminal received death penalty after the assizes could be executed during the autumn after review—either Autumn Assizes, Courts Assizes, or other reviews. In this period, the Autumn Assizes was not fully established. Such cases could be reviewed by the inspectors or officials in the provinces and the criminal could be executed after the review.

discuss it (QSL, SZ, vol. 103: 799). Several days later, Shunzhi ordered the Board of Punishment to carry out the Court Assizes (QSL, SZ, vol. 103: 806). Because the Qing suspended the Autumn Execution in 1655, many criminals would have been executed in accordance with the result of the Court Assizes in both 1656 and 1655. On December 9, 1656, Shunzhi said that he could not bear to kill so many people at one time, so he had some high officials (mostly Manchus) to review again and to find any possibilities to reduce or pardon anyone (QSL, SZ, vol. 104: 810). On December 14, the emperor decided to suspend the Autumn Execution because the Court Assizes had just ended, the case files were too many, the execution date was coming, he did not have time to read the case files carefully, and could not bear to execute the criminals so hastily. Suspending the Autumn Execution was a way to brighten the emperor's utmost determination of commiseration (QSL, SZ, vol. 104: 811).

Fifth, on January 19, 1657, the emperor decreed another general amnesty to celebrate the promotion of his beloved concubine, and the amnesty reduced the punishment by one degree for those who received death penalty with detention and were categorized under the circumstances of deserving execution during the Court Assizes (QSL, SZ, vol. Vol 105: 816-7). The amnesty also reduced the punishment by one degree for criminals in the provinces who received death penalties after the assizes. More importantly, the general amnesty, different from previous ones, did not exclude fugitive cases at all. Harborers could also receive one degree less severe punishment. Archival cases show that by applying this amnesty harborers were sentenced to exile instead of strangulation after the assizes (e.g. NGDK, 117519). All harborers regardless whether they

had been reconsidered during the Court Assizes in 1655 and 1656 received a punishment one degree less severe than death.

By then, the emperor actually exempted the harbinger from the death penalty.¹¹⁹ He never stated that he applied such policies in order to punish harborers less severely. With historians' hindsight, it is not difficult to deduce that the emperor was seriously concerned with harborers by commuting the death penalty. One piece of strong evidence lies in his amnesty policies. There was a tradition that amnesty excluded harborers. The Shunzhi emperor issued three general amnesties from October 15, 1654 when he approved the harsh fugitive law to March 27, 1657 when he decided to change it. The two amnesties mentioned above either just partly excluded harborers or did not exclude them at all. Shunzhi legitimated the suspensions of the Autumn Execution by very Confucian reasons like benevolence.

When Shunzhi revised the harsh 1654 fugitive law in 1657, it became very clear that the suspension was mainly for harborers.

According to the original law that was established on hiding fugitives, the person who hid the fugitive would be enslaved and given to the fugitive's original master. Unexpectedly, evil rascals thereafter took advantage of this law, swindled and hurt [the commoners]. There were hundreds of abuses [of this law]. Later on, after debate and revision of the law, the harbinger who hides the fugitive will be strangled after the Autumn Assizes. [After this revision of the law,] once a slave fled, then a harbinger was sentenced to death. *In recent years half of the major criminals sentenced to death penalty after the assizes were harborers.* Human life is of the utmost importance. *Who are not our sincere children* (my emphasis)? Our conscience cannot abide it. (QSL, SZ, vol. 107: 838-9)

Shunzhi clearly indicated that he suspended the Autumn Execution partly because half of the criminals sentenced to death penalty after the assizes were harborers. After careful

¹¹⁹ Tani (1989: 34) misunderstands the *Qing shilu* and alleges that the Qing released harborers in 1661.

consideration, Shunzhi suggested that it would be better to tattoo the face of harborer, to enslave him and his family members and to make them serve the poor banner soldiers (QSL, SZ, vol. 107: 838-9). Emperor Shunzhi directly admitted that all persons under Heaven, whether Manchu or Han, were his subjects. The emperor had the princes and ministers of Deliberative Council, the Nine Ministries and other various capital officials discuss his proposal, and obviously, the emperor's suggestion became the law after the discussion (KXHD, vol. 107: 5327). Shunzhi's explanation of revising the fugitive law clearly indicates his concerns about the Han people. He not only applied various ways to reduce the harborer's punishment but changed the fugitive law.

Besides what Shunzhi did, what he said also demonstrates that the 1654 harsh fugitive law was not his intention. For example, on August 2, 1656, when he issued a special edict to admonish Manchus or slave owners, he said it very clearly that the 1654 harsh fugitive law was not his intention, and he had no choice but to approve it because he understood Manchu soldiers' hardship in battles and as the Manchu ruler, he had the responsibility to keep Manchus' slaves from escaping. He urged Manchus to think "why slaves leave lightly (*qing qu* 轻去)" and to treat slaves benevolently. In the long edict, Shunzhi applied many Han principles suggested by Han officials to show that he did not advocate the harsh fugitive law. He admitted the legitimacy of the principle of protecting commoners. As he said, "WE are the master of ten thousand kingdoms (*guo* 国), and [when WE] consider the various people who have violated the law, whom among them is not one of numerous heaven created people (*tiansheng zhengmin* 天生烝民)? Who is not a loyal subject of the court? If the penalties are daily increased, and then registered households are daily decreased, how can your (slave owners) heart be at peace?" Shunzhi

admitted that everyone under Heaven was his subject (QSL, SZ, vol. 102: 788). Such an edict implies that even though the emperor stand for Manchus and approved the very harsh fugitive law, he also saw himself as a Chinese emperor. In short, the emperor actively protected harborers by punishing the harborer more lightly than the 1654 fugitive law stipulated.

Shunzhi could do this because he was the emperor — the only person enjoyed a status above any laws. After Dorgon died, no single banner lord could militarily or politically challenge the emperor, though Shunzhi was still a teenager and it was Manchu nobles headed by Jirgalang who managed the state. Even the most influential banner lord Jirgalang could not stop the young emperor from doing what he was determined to do after 1653, not to mention that Jirgalang died in 1655.

After Shunzhi relaxed the fugitive law in 1657, fugitive phenomenon was still a very serious social problem as the fugitive law was still hurting Han. Harborers still received a very harsh punishment of enslavement and Shunzhi did not essentially change the law. Under such a general situation, the fugitive law became more matured, less harmful to Han and more unfavorable to slave's masters after 1657. The emperor continued to balance between Manchu and Han on this sensitive issue.

On June 7, 1658, Shunzhi decreed an edict to change the fugitive law in order to stop various ruffians — they could be either bannermen or civilians — from blackmailing innocents. This edict was a positive response to Zhang Xuanxi's memorial mentioned at the beginning of this chapter. Shunzhi clearly revealed that he was deeply concerned about the equality between Manchu and Han and the misfortunes that many commoners had experienced (QSL, SZ, vol. 117: 909–910). On June 14, 1658, the Qing further revised

the fugitive law and the new law conceived more detailed regulations to stop blackmails (QSL, SZ, vol. 117: 912-3). Other changes of the fugitive law from 1657 to 1661 show similar tendency — the fugitive law became more comprehensive and more protective for Han.

As discussed, Shunzhi showed a more lenient attitude toward Han in terms of the legislation of the fugitive law in 1652 but he must maintain balance between Manchu and Han. When the conflict between Manchu and Han officials became heated in 1654, he was forced to stand for Manchus. Shunzhi however managed to protect Han after 1654. After 1654, the practice and legislation of the fugitive law became more and more protective for the Han people. The tendency continued after Shunzhi died in 1661 when his successors dishonored his sinicization policy.

4. The fugitive law after the Shunzhi reign

After Shunzhi died, the Oboi Regent dishonored Shunzhi's sinicization policy.¹²⁰

Scholars (e.g. Oxnam, 1975) generally understand that the Oboi Regency from 1661 to 1669 was a period of “Manchu dominance.” Some scholars (e.g. Xu, 1983: 74-5; Wu,

¹²⁰ When the Shunzhi emperor died in 1661, he had had his four most trusted courtiers Soni, Suksaha, Ebilun, and Oboi, or “ministers who assist (the emperor) in governance (*fuzheng dachen* 辅政大臣),” to take charge of the state since the Kangxi emperor was still a child. The four regents were all Manchu nobles, but none of them was imperial clansman, not to speak of banner lords. The Shunzhi emperor did not want another Dorgon to assist his son. However, the four courtiers opposed the Shunzhi emperor's policy of adopting Han culture and institutions. The Imperial Will (*yizhao* 遗诏) written in the name of the deceased Shunzhi emperor roundly discredited Shunzhi emperor's many policies. According to the Will, the Shunzhi emperor committed fourteen “sins” and the first one was that he did not rule the realm well because he did not strictly follow the Manchu traditions but gradually practised the Han customs instead. Oboi was not always solely dominant during the whole period from 1661 to 1669. In the first five years, the four regents ruled the realm. Kangxi namely took his personal governance in 1667, but Oboi actually controlled the state.

2009:) credited Kangxi as the key ruler who relaxed the fugitive law and argue that the Oboi Regency implemented a more severe policy toward the fugitive cases.

The four Manchu regents however followed the Shunzhi emperor's policy, and they even went further than the Shunzhi emperor. Like the Shunzhi emperor, the regents made various efforts to stop innocents from being implicated by real or pretended fugitives (QSL, KX, vol. 13: 205-6; vol. 14: 207; vol. 21: 299; KXHD, vol. 107: 5340-5341). More than that, the regents even punished the harborers and their neighbors lightly. In 1665, the harborer was not tattooed anymore; In 1667, still under the Oboi Regency, the Qing court stopped punishing harborers by enslavement and exiled them to Shangyangbao instead; in 1668, the Qing court decided to punish the harborer's neighbors by wearing the cangue for one month and forty actual blows of the heavy bamboo instead of exile (KXHD, vol. 107: 5327).

The regents punished *zhufang* 驻防 bannermen¹²¹ who hid fugitives more severely than civilians. In 1661,¹²² the Qing court decided to punish any *zhufang* bannerman who hid fugitives, regardless of officers or commoners, by death. In 1668, the Qing court revised the regulation and punished officers by deprivation of the post with a fine of one hundred taels, and commoners by wearing the cangue for three months and lashing with one hundred strokes of the whip (KXHD, vol. 107: 5330). The Oboi Regency obviously once imposed more severe punishments on *zhufang* bannermen than on civilian commoners and other bannermen.

¹²¹ Bannermen who stationed outside Jingshi were called *zhufang*. Ding Yizhuang's (2003) study examines details about zhufang in the Qing dynasty.

¹²² This regulation was established in the eighteenth year of the Shunzhi reign. The Shunzhi emperor died on the seventh day of the first month in the eighteenth year of the Shunzhi reign. Considering his healthy status and his death date was so close to the Chinese New Year, such a decision was most probably made by the four regents.

The four regents also punished fugitives more harshly. In 1661, the Qing court decided to punish third and fourth-time fugitives by immediate strangulation and decide to exclude them from amnesty (KXHD, vol. 129: 6453). The exclusion from amnesty is interesting since during the Shunzhi's rule by himself, most amnesties excluded only harborers instead of fugitives. Probably such a regulation was too harsh, the Qing court abolished the content of exclusion from amnesty in the same year, but third-time fugitives will still be punished by immediate strangulation. The court applied this revised regulation up until 1668 when the Qing court decided to punish third-time fugitives by strangulation after the assizes again (KXHD, vol. 129: 6453). The four Manchu regents came closer to the legal concerns of Han officials: punishing fugitives harshly and harborers lightly in order to maintain the equality of law.

By relaxing the fugitive law for Han and tightening for bannermen, the regents actually continued to protect Han interests. The regency also followed the Shunzhi emperor's footsteps and they went further than Shunzhi. Even though the four regents notoriously restored many Manchu-orientated policies, they were not so Manchu-orientated on this very sensitive issue.

After the Oboi Regency, the Kangxi emperor continued to relax the fugitive law for both harborers and fugitives. In 1671, Kangxi decided to punish *zhufang* harborers less severely than the Oboi Regency did. *Zhufang* officers were removed from office and banner commoners were punished like other regular harborers (KXHD, vol. 107: 5330). Another big change was that the Qing court promulgated the *Dubu zeli* in 1676 (QSL, KX, vol. 59: 766, 768; KXHD, vol. 107: 5311). By then, the fugitive law became a formal *zeli* (also a Qing law). In 1686, Kangxi abolished the death penalty for the third-time escapees

and punished them by exile to Ningguta as slaves to serve poor banner soldiers (KXHD, vol. 107: 5313). Now, nobody received death penalty because of fugitive cases. Kangxi also abolished the Supervisor Yamen on Arrests in 1699. This abolition suggests that fugitives were not a severe problem in Qing society any more.

The Qing rulers further relaxed the fugitive law after the Kangxi reign. By the mid-Qing, the main goal of the fugitive law was not to protect slavery but to prohibit regular bannermen from escaping when bannermen became destitute (Liu, 1964: 132-144) and still must stay at their garrisons. Han legal principles prevailed over the fugitive law. First, fugitives usually referred to regular bannermen (DBZL, vol. 1: 494). Xue Yunshen noticed the change from slaves to regular bannermen and suggested the first article¹²³ should not be in the *Dubu zeli* (DC, bu001, commentary). Not surprisingly, imperial clansmen could be fugitives and they were also the target of the fugitive law (e.g. ZRFLW, 557). Second, the Qing court gradually punished harborers and fugitives appropriately and to some extent, the Qing court eventually recognized the Han notion of equality of law. According to the 1743 *Dubu zeli*,¹²⁴ the severest punishment for civilian harborers was penal servitude for three years while for the third time fugitives was exile to Ningguta (DBZL, vol. 1: 494). Bannermen harborers also received similar severe punishments with civilian harborers (DBZL, vol. 2: 522). Third, in 1800, the Qing ruling house admitted that the fugitive was the principal and the harborer the accessory, and the harborer received one degree less severe punishment than that of the fugitive (GXHDSL, vol. 855: 1280). Fourth, the fugitive law gradually admitted and accepted the penal system of five

¹²³ It dealt with escaped regular bannermen.

¹²⁴ In 1676, the Qing court compiled articles of the fugitive law into the *Substatutes of Supervision on Arrest* or the *Dubu zeli* (QSL, KX, vol. 59: 766, 768; KXHD, vol. 107: 5311) and revised it in 1743.

punishments. In 1646, it imposed exile on offenders; in 1648, it imposed beating with bamboos other than lashing with whips on civilian violators; in 1653, it adopted strangulation after the assizes; the penal servitude appeared in the 1743 *Dubu zeli*. In short, the fugitive law was still on the book, but its content transformed, and it was not a tool through which Manchus oppressed Han any longer by the Qianlong reign.

The most dramatic change happened in 1825. A new regulation stated that any banner official in Jingshi who had escaped once would be dismissed and be deprived of his banner status¹²⁵; if an “idle” bannerman (*xiansan* 闲散) or those who were not assigned to military duties had fled at his first time but more than one month or fled twice, he would be deprived of his banner status and become a civilian; if he fled at his first time and returned himself in one month, he would be pardoned; if he fled at his first time but was captured in one month, he would be slashed by 100 strokes of the whip and be permitted to serve as a banner soldier. This regulation was effective to regular bannermen both in Shengjing and in the provinces. A similar regulation that dealt with bannermen in Jilin and Heilongjiang was added in 1834 (GXHDSL, vol. 855: 1278).

The 1825 legislation severely overthrew the long-held Qing policy of protecting the base of Manchu society: the banner system. The legislation actually permitted bannermen to leave the banner system and to make a living themselves if they wanted to do so. It

¹²⁵ After a bannerman was removed from banner rolls, he became a civilian. In this respect, the status of bannermen could hardly be considered as an ethnic identity. This regulation and practice question Mark Elliott’s (2001) argument that bannermen and Manchus conflated as an ethnic group. In other words, all bannermen were Manchus in the late Qing. According to Elliott’s logic, a Manchu’s ethnic identity could be easily stripped of by the state. As Lai Huimin’s study (2011) shows, there were multiple ways in which a bannerman was removed from the banner rolls. Therefore, I oppose the conflation of bannerman and Manchu through the whole Qing dynasty. The former always indicated a legal status. The historical fact that any bannerman could claim that he was a Manchu after 1912 could hardly explained what happened in the Qing dynasty.

corresponded to another regulation from 1825 that permitted “idle” bannermen to leave the banner system (DC, 76.09). The legislation indicated a fundamental change of Qing rule by showing that the Qing ruling house was not so concerned that bannermen escaped.

III. Adjudicating Fugitive Cases

Under the influence of Han bureaucratic rule, the Qing court also treated the adjudicative procedure of fugitive cases from special to “normal.” The adjudication had experienced three stages since 1644. In the first stage, from 1644 to 1653, the judicial procedure of fugitive cases was not so different from that of other cases involving bannermen. The Board of Punishment adjudicated fugitive cases and treated them like other immediate examining cases. In the second stage, from 1653 to 1699, the Board of War or its subordinate institution the Supervisory Yamen on Arrests adjudicated fugitive cases, but if a fugitive case concerned death penalties, the Board of Punishment (or the Three High Courts) adjudicated it. If a fugitive committed other crimes, the Board of Punishment adjudicated this case. In 1699, the Qing court abolished the Supervisory Yamen on Arrests and the Board of Punishment adjudicated fugitive cases (mainly in Jingshi). From 1656 on, local banner and civil officials gradually had more power in adjudicating fugitive cases outside Jingshi and minor fugitive cases were not immediate examining cases any more. Han bureaucratic rule gradually predominated the adjudication of fugitive cases.

1. The Board of Punishment adjudicated fugitive cases (1644 to 1653)

Because fugitive cases always involved bannermen, they were also categorized as immediate examining cases in the early Shunzhi period. The 1646 fugitive law clearly defines fugitive cases as immediate examining cases. Before 1656, fugitive cases happening outside Jingshi, just like other cases involving bannermen, were not under the authority of local officials but that of the Board of Punishment. In Jingshi, the preliminary courts also must send fugitive cases to the Board of Punishment.¹²⁶ During this period from 1644 to 1653, the Board adjudicated these cases very similarly to other immediate examination cases.

After the Board of Punishment accepted a fugitive case directly or indirectly,¹²⁷ it adjudicated the case just like other immediate examining cases. Before 1653, the Board adjudicated fugitive cases solely without further review by the Three High Courts even if

¹²⁶ It was possible that Shengjing banner officials adjudicated fugitive cases in Manchuria if no harborers were involved. For example, in 1655, the general (Chinese: *angbang zhangjing* 昂邦章京 Ma: amban janggin) in Shengjing transferred a thrid-time escaped slave to the Board of War. No harborers were mentioned in the three times. The slave firstly escaped in 1652 and secondly in 1653 and he was punished by one hundred strokes of the whip each time. The general recommended a decapitation punishment for his third-time escape in 1653 and sent the case to Board of War. The Board of War, as was routine, memorialized the emperor and the emperor also, as was routine, order the Three High Courts to jointly review this case. In this case, the Shengjing authorities most probably adjudicated the slave after he escaped for the first and second time in 1652 and 1653.

¹²⁷ There are multiple ways to catch the fugitives. A fugitive case could be reported to the court in many ways. A fugitive might be found by his master or other bannermen; his harborer might report him; the harborer's neighbors could report him; and local officials could find him through regular examination. When a yamen received a fugitive case, it must send it to the Board of Punishment without charging crimes, not to speak of recommending sentences. There were always some exceptions, however. Following the pre-1644 legal tradition, bannermen often brought cases directly to the Board of Punishment. Before 1647, bannermen also reported fugitive cases directly to the Board of Punishment (e.g. NGDK, 185037). After the promulgation of the Qing code in 1647, a fugitive case was typically reported to the Board of War first, then the Board of War transferred to the Board of Punishment. Sometimes, bannermen still brought criminals to the Board of Punishment (e.g. NGDK, 087617).

offenders were sentenced to death. Before August 1645, a harbinger could even be executed with emperor's oral approval. The Erhaizi case was just one example that the court executed a harbinger before the submitting written memorial. By following the Manchu legal tradition, the Board strictly applied the fugitive law without citing the law itself. At most, the Board stated that such and such offenders should be punished in accordance to the law or the statute, but it never clearly spoke out what the law or the statute was.

Because we know the content of the fugitive law, it is not difficult to conclude that the Board of Punishment applied it. One example is the case of Liu Peishi mentioned in the beginning of the chapter. In this case, the Board of Punishment strictly applied the fugitive law without any citation. It merely mentioned the statute or precedent as the basis of the judgement. But clearly, all sentences were in accordance with the 1646 fugitive law in the 1647 Qing code. Other fugitive cases (ex, NGDK, 087618) also demonstrated the strict application of the fugitive law. The fugitive law was always changing but the jurists applied different versions of the law. The different punishment the slaves received between this case and the Erhaizi case in 1645 is just one example that the Board applied the current versions of the fugitive law.

Besides the fact that the bureaucracy from provincial officials¹²⁸ to the jurists in the Board of Punishment strictly followed the fugitive law, the emperor changed the final judgments less frequently. Before 1644, it was very often that the emperor or khan revised the sentence recommended by the jurists. After 1644, the emperor usually just approved

¹²⁸ In a very few cases, local officials in the provinces sent fugitive cases to the Board with charged crimes and recommended sentences (e.g. NGDK, 087721). Their proposed sentences strictly followed the fugitive law.

the sentence recommended by the jurists. In other words, the emperor's personal will/opinion played a less obvious role in adjudicating fugitive cases and the juridical system became more bureaucratic.

The emperor nevertheless still reserved the authority to revise judgments. In a very few cases, he did revise the recommended punishments. Such revisions were not in accordance with the fugitive law. For example, a slave Liu Xia'er 刘小二 fled and went to his father Liu Shang'an's 刘尚安 home in Changli county, 昌黎县 Zhili province on January 20, 1646. In 1648, the community leader reported the case to the court who sent the culprits to the Board of Punishment for trial. The Board sentenced Liu Shang'an to decapitation with confiscating/enslaving his wife and children and family properties. Liu Xia'er received one hundred strokes of the whip. The Board decided to give both Liu Xia'er and Liu Shang'an's confiscated properties (including his wife and children) to Liu Xia'er's master. The sentence followed the 1648 fugitive law. The Board exempted neighbors from punishment since the community leader disclosed the case. The Board memorialized the case to the emperor for approval on July 14, 1648. The emperor did not just approve the judgments as usual but reduced Liu Shang'an's punishment instead. The imperial rescript says, "Liu Shang'an will be beaten by 40 blows of the heavy bamboo and be given to [Liu Xia'er's] master [as a slave]. All other [sentences] will be implemented as recommended" (NGDK, 087735). The emperor did not explain why he reduced Liu Shang'an's punishment. The most probable reason was the father-son relation between the

harborer and the escaped slave. The emperor's revision did not follow the fugitive law at all.¹²⁹ Such cases reflect that the emperor still enjoyed a status above the bureaucracy.

Even though Board of Punishment adjudicated fugitive cases, the Board of War also played an important role in dealing with these cases. Catching fugitives was one task of the Board of War. According to the 1647 Qing code, a fugitive case must be firstly reported and be approved at the Board of War. Local officials in the provinces must send fugitives or harborers to the Board of War. After the Board of War received the case, it must register and make the story clear, and then transfer it to the Board of Punishment. The Board of War could not adjudicate fugitive cases however. It thus did not charge crimes or make recommended sentences either.

2. The Board of War adjudicated fugitive cases in 1653

The tenth year of the Shunzhi reign (1653) was as a turning point in the adjudication of fugitive cases. From this year on, the adjudication of fugitive case was different from other immediate examining cases. Again, in 1653, fugitive cases happened in the provinces still must be sent to the Board of War, but it was the Board of War, not the Board of Punishment, that adjudicated fugitive cases. Only if the fugitive or the harborer received a death penalty could the Board of Punishment or the Three High Courts review the case.

I did not find any Qing official regulations that detail the transition of judicial power from the Board of Punishment to the Board of War. One case clearly shows that the

¹²⁹ This case was just an exception. In many other cases concerning father-son or mother-son relation (e.g. NGTB, 2087-1; 2087-21), the jurists just applied the fugitive law and the emperor just, as was routine, approved the recommended sentence. The Qing court did not respect the Confucian tradition to uphold the father-son relation despite of Han officials' opposition.

Board of Punishment still adjudicated fugitive case in the first month of the tenth year of the Shunzhi reign (NGDK, 086324). But the Board of War adjudicated fugitive cases no later than the third lunar month of the tenth year of the Shunzhi reign and the Board of War applied the fugitive law without direct citation too (e.g. NGTB, 1866-2). As mentioned in the previous chapter, the Board of War took control of the patrolling and arresting battalions that was the major police force outside the inner city in Jingshi (KXHD, vol. 86: 4285). The Bureau of Discipline (*zhifang qinglisi* 职方清吏司) of the Board of War took charge of the patrolling and arresting *battalions* and dealt with fugitive cases. In archives, this bureau was also called the Bureau of Discipline and Supervising on Arrests (*zhifang dubu si* 职方督捕司) or simply the Bureau of Supervising and Arrest (*dubu si* 督捕司). Senior officials (*tangguan* 堂官), or presidents or vice-presidents of the Board of War made the final sentence (e.g. NGDK, 086324).

The Board of War could conclude fugitive cases if they did not involve death penalties or other crimes. But if the case concerned other severe crimes or officials, the Board of War must send it to other relevant yamens like the Board of Punishment. These yamens just sentenced other crimes, not the offense concerning fugitives. For example, in a case memorialized on November 29, 1653, a banner official in Shengjing, Ang'ai 昂爱, caught one of his escaped slaves. Ang'ai lied that the slave returned himself in order to cancel the fugitive record (*taodang* 逃档). Ang'ai's offense was disclosed, and the jurists in Shengjing sentenced him to fining *tuheile weile*. As a fugitive case, it was sent to the Board of War. The Board of War sentenced the crime of escaping but transferred Ang'ai to the Board of Punishment. The Board of Punishment stated that Ang'ai completely

violated the statute “Officials Exonerating the Guilty or Implicating the Innocent” (*Guansi churu ren zui* 官司出入人罪) and according to this statute, the violator will be punished exactly in accordance with the law the violator had offended (DC, 409.00). Therefore, the Board of Punishment punished Ang’ ai by one hundred strokes of the whip, same as a fugitive would have received in accordance with the fugitive law. As an official, the Board commuted his punishment to a fine of 10 taels. The emperor approved the Board of Punishment’s sentences (NGDK, 087562).

If a fugitive case concerned the death penalty, the Board of War also must send it to the Board of Punishment for review. The Supervisory Yamen on Arrests usually did not send such cases directly to the Board of Punishment. It usually memorialized to the emperor and the emperor usually had the Three High Courts to review since in 1653, the Qing court had already established the system of co-review or co-adjudication by the Three High Courts for capital cases. Such a judicial procedure was different from that of other immediate examining cases. When the Board of War sent a fugitive case to the Board of Punishment for review, it must make recommended punishment of death penalty (not always cited the fugitive law). For example, on August 8, 1653, the Board of War memorialized a fugitive case to the emperor. In the case, a slave fled three times. The Board of War stated “we received the edict that a fugitive will be strangled if he has fled three times and we correspondingly ask Your Majesty to order our Board [of War] to transfer this case to the Board of Punishment to execute [the offender] in accordance with the precedent (*li*).” The emperor, as was routine, ordered the Three High Courts to review this case. The Board of Punishment reviewed this case and sentenced the offender to strangulation after the assizes in accordance with the established precedent (*dingli* 定例).

The Censorate and the Grand Court of Revision also upheld the same opinion. The Three High Courts collectively memorialized their sentence to the emperor on October 14, 1653 and the emperor approved their sentences (NGTB, 1867-16).

3.The Supervisory Yamen on Arrests adjudicated fugitive cases (1654-1699)

On February 8, 1654, the Qing court established the Supervisory Yamen on Arrests (under the Board of War) (QSL, SZ, vol. 79: 627). The court added more officials and clerks to the Yamen in early 1654 (QSL, SZ, vol. 80: 630). From 1654 to 1699, it was the Supervisory Yamen on Arrests that adjudicated fugitive cases. The Qing not only transferred the jurisdiction from the Board of Punishment to the Board of War, but established a special institution under the Board of War to deal with fugitive cases. Such changes reflect both the seriousness of the fugitive problem and the Qing court's attitude. Fugitives were not just a judicial problem, but also a military problem. It was very unusual for the Qing court to grant the Board of War the authority to adjudicate fugitive cases. The Board of War now was comprehensively involved in fugitive cases, from acceptance, arrest, to adjudication.

Interestingly, the establishment of the Supervisory Yamen on Arrests followed Han officials' proposal. The Board of War memorialized to the emperor that it would not adjudicate fugitive cases because staff members involved in the adjudication might leak military secrets. Based on a memorial submitted by Xu Zuomei's 许作梅, who was a junior Secretary of Office of Scrutiny for Public Work (*gongke you jishizhong* 工科右给事中), the emperor adopted Han officials' advice to establish a new institution under the Board of War. Xu himself advocated the Board of War to adjudicate fugitive cases but

opposed to set up a new institution to deal with fugitive cases. As he argued, the fugitive law was only part of the codified law, and the most important content of the codified law was articles concerning rebellion and treason. Next to rebellion and treason were articles concerning bandits. The Qing court never specially set up official post to deal with rebellions, treasons, or bandits. Therefore, it was not suitable to set up new official posts for fugitive cases (SZTR, 65-6).

The Qing court nevertheless set up a new institution and new official posts to deal with fugitive cases. There were one Manchu senior vice-president (*man zuo shilang* 满左侍郎) and one Han junior vice-president (*han you shilang* 汉右侍郎) in the Supervisory Yamen on Arrests (KXHD, vol. 3: 83-4). They could directly memorialize to the emperor. There were four bureaus (*si*). They were east, west, north, and south bureaus. As the Kangxi *daqing huidian* indicates, all the four bureaus adjudicated fugitive cases (KXHD, vol. 107: 5309). The East Bureau (*dongsi* 东司) also took charge of the patrolling and arresting battalions.

The judicial procedure did not change fundamentally. The only difference is that the change of jurists and institution. In 1653, the jurists were ministers and bureau directors or secretaries of the Board of War. After the establishment of the Yamen on Arrest, the jurists were officials of this yamen. They were directors (*langzhong* 郎中), vice-directors (*yuanwailang* 员外郎), and secretaries (*zhushi* 主事) of the four bureaus (KXHD, vol. 107: 5309). After these jurists made adjudicative decisions on fugitive cases, the Manchu senior vice-president and the Han junior vice-president made final decisions.

Archival cases show that the Supervisory Yamen also strictly followed the fugitive law in sentencing.

Before the eighth lunar month of the thirteenth year of the Shunzhi reign (1656), the Supervisory Yamen applied the fugitive law, but in most cases, it did not cite the law. For example, In 1650, slave Yazhu 牙住 escaped from Beijing to Wei Tang's 尉堂 hotel in a village in Datong, Shanxi province. After two years, Yazhu returned to his elder brother Zhai Zhong's 翟忠 home in the first lunar month of the thirteenth year of the Shunzhi reign (1656). Wei Tang was involved in another Manchu case and escaped, so Wei Tang's grandson Wei Hu 尉虎 reported Yazhu. The governor-general of Xuanda,¹³⁰ as was routine, sent this case to the Board of War which had the Supervisory Yamen on Arrests try it. The Supervisory Yamen on Arrests returned Yazhu to his master and punished him by slashing with one hundred strokes of the whip. The Yamen sentenced Zhai Zhong to death (which must be reviewed by the Board of Punishment); gave one third of Zhai Zhong's property to the reporter Wei Hu; confiscated/enslaved the other two-thirds and Zhai's wife and children; punished Zhai Zhong's neighbors (usually referred to the head of the family) by exile with forty actual blows of the heavy bamboo, the neighbors' wives and children by exile, the community leader by forty actual blows of the heavy bamboo (implemented by the local officials). The sentences perfectly accorded with the current 1654 fugitive law (QSL, SZ, vol. 86: 676-8). The Supervisory Yamen on Arrests memorialized the case to the emperor on June 3, 1656 and asked the emperor to have the Board of Punishment execute Zhai Zhong because he committed a capital offense. One day later the emperor had the Three High Courts review. The Three High Court

¹³⁰ Xuanda refers to Xuanfu 宣府 and Datong 大同.

sentenced Zhai Zhong to strangulation after the assizes (NGDK, 087671). In this case, the Supervisory Yamen on Arrests strictly applied the fugitive law without any reference. In this sense, the Supervisory Yamen was just like the Board of Punishment before 1653 that did not cite the law in sentencing.

The Supervisory Yamen on Arrests gradually adopted the Han format of verdicts by citing the law clearly since the eighth month of the thirteenth year of the Shunzhi reign (1656). For example, on December 13, 1656, the Supervisory Yamen on Arrests memorialized the emperor a case. In this case, a female slave had escaped twice. The Supervisory Yamen on Arrests stated that “the established precedent states that if a fugitive has fled once, he shall be lashed with one hundred strokes of the whip, be tattooed with Manchu and Han characters on his face. If has fled twice, he shall be executed” and the yamen memorialized to the emperor to ask him to have the Board of Punishment execute the female slave. The emperor, as was routine, had the Three High Courts review this case (NGDK, 087604). The Supervisory Yamen on Arrests clearly applied the current fugitive law with clear citation.¹³¹ The clearly citation demonstrates the Han bureaucratic rule’s impact on the adjudication of fugitive cases.

If a case did not involve other severe crimes or death penalty, the Supervisory Yamen on Arrests could conclude it. The above two cases show that if a fugitive or harborer would be sentenced to death, the Supervisory Yamen on Arrests usually memorialized the emperor and the emperor then had the Three High Courts review. If a case concerned other crimes besides escape, it must send the case to other relevant yamens.

¹³¹ The article of the fugitive law: “if a fugitive has fled once, he shall be tattooed with the characters of *taoren* (fugitive) in both Manchu and Han languages and be lashed with one hundred strokes of the whip; if he has fled twice, he shall be executed (KXHD, vol. 107: 5312).

As discussed in the previous chapter, the Board of War was a major police force in Jingshi and it could conclude minor cases. Then, could the Supervisory Yamen on Arrests also conclude other cases besides fugitive ones?

The Supervisory Yamen on Arrests also sentenced other criminals that the patrolling and arresting battalions arrested after 1676. In 1655, the Qing clearly stipulated that criminals arrested by the patrolling and arresting battalions should be sent to the Supervisory Yamen on Arrest, and then be transferred to the Five Wards for trial. If the possible punishment was penal servitude or above, the Five Wards should record confessions and testimonies and send the case to the Board of Punishment; otherwise, the Five Wards could conclude these cases (GJTS, ce 769: 39). The fugitive cases were naturally excluded in this regulation. This regulation indicates that the Supervisory Yamen on Arrests could not try other cases arrested by the three patrolling and arresting battalions. In 1675, another regulation further confirmed the 1655 regulations. The Three Patrolling and Arresting Battalions did not need to report affray, theft or gambling cases to the Supervisory Yamen on Arrests any more, and they should directly transferred these cases to the Board of Punishment or the Five Wards (KXHD, vol. 108: 5399).

However, in 1676, the Qing court clearly stated that the Supervisory Yamen on Arrests could try criminals that the three patrolling and arresting battalions arrested except for cases of gambling, affray or “bare stick” (*guanggun* 光棍) that should be transferred to the Board of Punishment or the Five Wards (KXHD, vol. 108: 5399). Another regulation in the Kangxi *Daqing huidian* stated that the Supervisory Yamen on Arrests tried not only fugitive cases but other cases like theft in Jingshi if the criminal was caught by the patrolling and arresting battalions (KXHD, vol. 107: 5309).

The above regulations were contradictory. Both the 1676 regulation and the general description in the Kangxi *Daqing huidian* state that the Supervisory Yamen on Arrests could try some minor cases if the offenders were caught by the patrolling and arresting battalions. Considering that the Kangxi *Daqing huidian* was compiled after 1676, the most reasonable explanation is that the Supervisory Yamen on Arrests could not try cases arrested by the patrolling and arresting battalions from 1655 to 1676, but after 1676, it could conclude some minor cases.

In 1691, the Qing court decided to have the three patrolling and arresting battalions under the authority of the Yamen of the Commander-general of the Metropolitan Infantry Brigade (QSL, KX, vol. 150: 661, 665). The Supervisory Yamen on Arrests naturally could not try minor cases caught by the three battalions except for fugitive cases.

The story is a little different for fugitive cases concerning other crimes. A 1664 regulation states that if a fugitive committed other severe crimes like homicide or banditry, such crimes must be adjudicated by the Board of Punishment; if just involving minor crimes like a business quarrel, the Supervisory should conclude them (KXHD, vol. 129: 6439). Clearly, the Supervisory Yamen on Arrests could conclude minor cases.

A record indicates that before 1672, both the Board of Punishment (for crimes like robbery) and the Board of War (for the crime of escaping) adjudicated fugitives who committed other crimes like robbery and theft. Therefore, the criminal received punishments at both boards. The Qing stopped such a mal-practice in 1672 by strictly following the Qing code that stipulates that if a criminal commits two crimes, he will be punished based on the more severe crime. The Qing court also established a regulation that if the Supervisory Yamen on Arrests found a fugitive committed crimes like robbery

or theft, it must send the criminal to the Board of Punishment for consideration of these crimes; after the Board of Punishment tried crimes like robbery or theft, the Supervisory Yamen on Arrests would sentence the criminal's crime of escaping (QSL, KX, vol. 38: 505-6). In 1683, a regulation clearly states that if a fugitive committed other crimes whose punishments were less severe than penal servitude, the Supervisory Yamen on Arrests should conclude the case; if a fugitive committed severe crimes like homicide or banditry, he would still be adjudicated by the Board of Punishment (KXHD, vol. 129: 6440).

In 1699, the Qing abolished the Supervisory Yamen on Arrests and had fugitive cases be tried by the Board of Punishment (QSL, KX, vol. 196: 1066). The abolishment of the Supervisory Yamen was a milestone in the adjudicating fugitive cases. It indicated that fugitive cases were not so important from the perspective of the Qing court. The Board of Punishment now mainly adjudicated fugitive cases in Jingshi. The adjudicative procedure was back to “normal” then.

4. Fugitive cases outside Jingshi

Just like other minor cases involving bannermen, minor fugitive cases outside Jingshi were gradually adjudicated by local officials instead of being send to Jingshi after 1656. *Zhufang* bannermen gradually “localized,” even though Jingshi was their home place (slaves who lived in the countryside were also registered under the masters’ household).

In 1656, the Qing court stipulated that if a *zhufang* bannerman in Fengtian prefecture (Fengtian *fu* 奉天府) escaped for the first or second time, he should be

adjudicated by the general (*jiangjun*),¹³² but for the third time, the general must report the case to the Supervisory Yamen on Arrests and the Board of Punishment for review because such a fugitive would receive the death penalty (KXHD, vol. 107: 5313-4). This regulation should exclude cases involving harborers, since in 1656, the fugitive law punished a harbor by strangulation after the assizes.

Another regulation in 1656 clearly stated that if any *zhufang* bannerman in Jiangning 江宁, Hangzhou or other places of China proper had fled for the first or second time, generals or other banner officials should clearly interrogate the case. If there was a harborer, they should report the case to the Supervisory Yamen on Arrests for review; if there was no harborer, they should punish the fugitive by whipping in accordance with the fugitive law. The Jiangning banner officials should report third-times fugitives to the Supervisory Yamen on Arrests who must memorialize the case to the emperor and transfer the case to the Board of Punishment (KXHD, vol. 107: 5315). This regulation demonstrates that a fugitive involving harborers or concerning death penalty should be sent to the Supervisory Yamen on Arrest.¹³³

In 1671, the Qing court established similar regulation for the *zhufang* bannermen in Ningguta. It stated that if a bannerman fled at the first or second time and if the harborer was a Manchu, or there was no harborer, the general should sentence the case in

¹³² It probably referred to the Liaodong General (*liaodong jiangjun* 辽东将军) when the *Huidian* was compiled. In 1646, it was called the Aangbang zhangjing 昂邦章京 (Ma: amban janggin). It changed to Liaodong General in 1662 and became the Shengjing General (*shengjing jiangjun* 盛京将军) in 1747 (QCWXTK, vol. 182: 6427-6430). In 1672, the Qing court ordered the Board of Punishment in Shengjing (*shengjing xingbu* 盛京刑部) to deal with fugitive cases (KXHD, vol. 107: 5314; vol. 130: 6489). As the other capital of the Qing dynasty, there were five boards in Shengjing. The Board of Punishment was one of them.

¹³³ In a case memorialized on July 20, 1656, this regulation was implemented (NGDK, 087668).

accordance with the fugitive law (KXHD, vol. 107: 5314). In the same year, the Qing court also had local civil officials in the provinces participate in the adjudication of fugitive cases. A regulation stated that fugitive cases in Baoding, Taiyuan, Cangzhou 沧州 and Dezhou should be reported to the governor and be firstly co-interrogated by both banner officials and provincial judicial commissioners — or circuit head (*daoyuan* 道员) if the place was too far away from the provincial capital. If there was a harborer, the governor should review and confirm the fact and only send the harborer to the Supervisory Yamen on Arrests (KXHD, vol. 107: 5315-6).

One year later in 1672, the Qing court granted more power to local civil officials. Governors or governor-generals adjudicated all escaped *zhufang* bannermen in the provinces. If there was no harborer or the bannerman escaped for the first or second time, the governors or governor-generals could conclude the case.¹³⁴ Otherwise, the case must be reported to the Supervisory Yamen on Arrests (KXHD, vol. 107: 5316). Nine years later in 1681, the Qing court decided to have banner and civil officials co-adjudicate fugitives in the provinces (KXHD, vol. 107: 5316).

The 1743 *Dubu zeli* confirmed that fugitive cases outside Jingshi were under the jurisdiction of local officials if they escaped for the first or second time and there were no harborers. If a *zhufang* bannerman fled, the case should be co-adjudicated by both civil and banner officials; if the fugitive received just whipping and tattooing, the governor, governor-general, or the Board of Punishment in Shengjing could settle the case; if the fugitive received the punishment of military exile as slaves (*faqian* 发遣), the case should

¹³⁴ According to the *Qing shilu*, such cases in the provinces were adjudicated by governors or governor-generals; in Fengtian 奉天, by the Board of Punishment in Shengjing; in Ninggutaby, by the general (QSL, KX, vol. 39: 530).

be sent to the Board of Punishment (DBZL, vol. 1: 520).¹³⁵ The Qianlong *Daqing huidian* states the jurisdiction more clearly: fugitive cases in Jingshi were adjudicated by the Board of Punishment; In Fengtian, by the Board of Punishment in Shengjing; in the provinces, by the governor or governor-general; if *zhufang* bannermen caught fugitives, banner officials co-interrogated the case together with civil officials in the same city and reported the case to the governor or governor-general; if there was a harborer or the fugitive fled for the third time, the case should be sent to the Board of Punishment (QLHD, vol. 69: 18). In 1825,¹³⁶ either the Board of Punishment in Shengjing or governors or governors-general in the provinces adjudicated *zhufang* bannermen fugitive cases in Fengtian and in China proper (DC, bu023; GXHD, vol. 856: 1287). All these regulations demonstrate that civil officials like governors¹³⁷ played a more important role than banner officials.¹³⁸

In sum, since 1656 on, the Qing court had gradually granted local officials more power in adjudicating first and second-time fugitives especially those without involving harborers. By the Qianlong reign, civil officials like governors played a more important role than banner officials in adjudicating fugitive cases in the provinces. The Qing court did not treat the fugitive cases so particularly any more. As I will discuss in the following chapter, minor cases involving bannermen outside Jingshi were also gradually under the

¹³⁵ There was a special regulation for servant or slaves of *zhufang* banner officers. If a servant or slave of a *zhufang* banner officer escaped in Jingshi, he should be adjudicated by the Board of Punishment; if he escaped outside Jingshi, he should be adjudicated by the governor or governor-generals; if he fled for the third time or there was a harborer, the governor or governor-general should send the case to the Board of Punishment (DBZL, vol. 1: 498).

¹³⁶ The *Duli cunyi* states that it was 1824, the Guangxu *Daqing huidian* states it was 1825.

¹³⁷ A governor or governor-general was probably a bannerman. But the official post was a civil one, not one under the banner system.

¹³⁸ As Ding Yizhuang (2002: 129-130) points out, during the Kangxi reign, the Qing court eventually decided to grant local officials, not banner officials, the power to catch fugitives.

authority of local officials instead of sending to the Board of Punishment in Jingshi as immediate examination cases. These changes were part of what I call “normalization” of the law in the Qing dynasty through which the Qing treated bannermen similar with civilians.

IV. Conclusion

Han legal principles gradually influenced and prevailed over the fugitive law and the adjudication of fugitive cases. First, the Qing rulers always cared about Han. Previous scholars always emphasize the early Qing rulers’ cruel attitudes toward Han on the fugitive issue, but these Qing rulers including Dorgon, Shunzhi, and Oboi always cared about Han. Second, the fugitive law gradually admitted and accepted the penal system of five punishments and abolished the cruel Manchu penalties such as hamstringing. Third, the adjudication of fugitive cases was also under the influence of Han bureaucratic rule. Until the Qianlong reign, the Qing court handled fugitive cases similar with other cases involving bannermen. Jurists in both Jingshi and provinces could conclude most fugitive cases. The Qing court did not consider fugitive cases outside Jingshi immediate examining cases any more. Fourth, the Qing ruler accepted the Han notion of equality of law and made the fugitive law more just by appropriately punishing the fugitive and the harborer. According to the 1743 *Dubu zeli*, the Qing court also punished banner and civilian harborers similarly. Banner harborers received a less severe punishment of wearing the cangue was because of their legal status as bannermen, not because of the fugitive law itself.

The Qing rulers must care about both Manchu and Han regarding to the fugitive problem and the balance between Manchu and Han was so vital and so strong that even the monarch faced limited choices. The capable regent Dorgon was unable to implement the harsh 1646 fugitive law partly because he must care about Han; the adamant Shunzhi who professed Han culture sided with Manchus when the struggle between Manchu and Han became heated and he could never relax the fugitive law too much; the conservative Oboi Regent who restored many Manchu policies revised the fugitive law as Han officials hoped; even the sage Kangxi emperor, like his predecessors, did not change the fugitive law dramatically. The changes were a gradual process and the Qing emperors also had limited choices since they were Manchus and they must rule Han. But with historians' hindsight, Shunzhi's tactics from 1654 to 1657 basically changed the tendency and the balance pole shifted to Han officials by increasing the punishments for banner harborers and fugitives and decreasing for Han harborers.

In any case, the fugitive law was not a problem in the middle and late Qing even though many slaves were still escaping. This result was from the change of Manchu or banner society. Frederic E Wakemen has pointed that both the Manchu land system and the Manchu system of slavery eventually collapsed (1985: 475-6). Many bannermen became landlords and they did not use coercive labor to cultivate the land anymore. Though the nominal master-slave or master-servant relation always existed between bannermen and their slaves, the de facto relation was just one between landlord and tenants (Wakeman, 1985: 475). Household slaves continued to exist, but such type of slaves was not different from the slavery practiced by the Han people for hundreds, if not thousands, of years. The Qing rulers gradually realized that slavery could not work and

established many regulations to free slaves (Zuo, 1980: 49-50). They adjusted the fugitive law in accordance with the social reality. By doing so, the Qing emperor saw himself as Son of Heaven, and persons all under Heaven were his subjects. In this respect, the Manchu society was constantly sinicized or “feudalized.”¹³⁹ The Han people eventually won the struggle.

¹³⁹ Under the Chinese Marxist discourses, Manchus were under the slavery or feudal serfdom society and they imposed slavery or serfdom on Han in China proper. Such a slavery or serfdom did not fit in “feudal” China. Through class struggles, typically slaves’ opposition by escaping and Han landlord’s opposition to Manchu slave owners by various Han officials’ memorials at court, the advanced “feudal” system defeated the backward slavery or serfdom system, and banner men became landlords while slaves either escaped or became tenants (except for household slaves or servants). In other words, Manchus evolved from a slavery society to a “feudal” society. By abandoning the Manchu backward slavery or serfdom modes of production and adopting the advanced Chinese “feudal” mode of production, Manchus were sinicized or acculturated into China.

Chapter 7 Maturing of the Juridical System of Jingshi

(1661-1900)

After the dramatic changes during the Shunzhi reign, the judicial structure of Jingshi experienced gradual changes and stabilized till the mid-Qianlong reign (1735-95). By then, the Qing ruling house had established a highly complicated and unified juridical system in Jingshi. The two-level juridical procedure was retained but certain deviation always existed. The web structure had been stabilized. After the mid-Qianlong reign, the judicial structure did not experience any obvious changes until the New Policy period (1901-1911). However, Qing law experienced tremendous changes throughout the dynasty. The Qing court continually restricted and abolished the juridical privileges enjoyed by bannermen, including imperial clansmen, in the process I call the normalization of the law. It began with the Shunzhi reign, intensified after the Yongzheng reign, and peaked during the Daoguang reign. It demonstrates that maintaining Manchu legal privileges was secondary to other Qing court's concerns such as Confucian ethics and that Manchus constantly adopted and revived Han legal principle in the juridical area.

This chapter analyzes the juridical changes between the Shunzhi reign and 1900. It delineates how the web structure in Jingshi reached its final form through a description of the creation of the Yamen of the Commander of Gendarmerie and the process by which severity of offenses substituted for legal identities to decide where a case involving regular bannermen or civilians should be tried. These changes also contributed to the normalization of the law since they enabled bannermen and civilians to be adjudicated by

the same courts. The chapter then analyzes the normalization of the law, especially the Daoguang transition. The chapter is concluded by an analysis of the relation between the Qing monarch and the juridical system in Jingshi.

I. The Creation of the Yamen of the Commander of Gendarmerie

The Yamen of the Commander-general of the Metropolitan Infantry Brigade was the most powerful institution in governing Jingshi. The Commander-general of Gendarmerie was popularly known as the General of Nine Gates (*jiumen tidu* 九门提督) or just the General. The Commander of Gendarmerie's full title is General of Nine Gates and Commander of the Metropolitan Infantry Brigade and the Five Patrolling and Arresting Battalions (*tidu jiumen xunbu wuying bujun tongling* 提督九门巡捕五营步军统领). As the title indicates, the Commander of Gendarmerie controlled three sectors of forces: the Eight Banner infantry brigade, the gate guards (*menjun* 门军), and the Green Standard (*lüying* 绿营) Patrolling and Arresting battalions.

As Tang Yanwei (2009, unpublished manuscript) demonstrates, the Yamen of Commander-general of Gendarmerie was established in 1674.¹⁴⁰ The Yamen controlled the sentries of the sixteen gates and the Eight Banners' infantries in 1674. In 1691, the Kangxi emperor decided that the Commander of Gendarmerie should also take charge of

¹⁴⁰ Tang's article however does not consider some records that mentioned the Commander-general of Gendarmerie in the Kangxi *Daqing huidian* before 1674 (e.g. KXHD, vol. 47: 2269—2270). Based on archives preserved in both Beijing and Taipei, I personally did not see any records before 1674. Since Tang also cites some records from the *Kangxi Daqing huidian* that demonstrate the Commander-general of Gendarmerie was not established until 1674, the Kangxi *Daqing huidian* might make mistakes. I hence adopted Tang's view.

the Three Patrolling and Arresting Battalions.¹⁴¹ In 1781, the Qing court extended the three battalions to five battalions (QSL, QL, vol. 1136: 180-2).

The 1691 change was a major step in combining the police forces in Jingshi. As discussed in the previous chapters, Manchus mainly lived in the Inner City where infantry soldiers of the Eight Banners served as police; the Han people mainly lived outside the Inner City where the Patrolling and Arresting Battalions were the major police force, they were assisted by the Five Wards which also played an important role in policing outside the Inner City. Such an arrangement caused some cooperative problems among these institutions. As Kangxi (QSL, KX, vol. 150: 661) stated in 1691:

Jingshi is the capital, a weighty place where people and business from four directions converge. The areas inside and outside of the capital city (Jingcheng 京城¹⁴²) must be administered by a special responsible [institution], [so that it is easy] to check the evil and to remove bandits. Then, merchants and commoners can be secure. Now, places inside the Inner City (*chengnei* 城内) are administered by the Commander of Gendarmerie; the Three Patrolling and Arresting Battalions outside the Inner City were governed by the Supervisory Yamen on Arrest. The responsible institutions inside (*nei* 内) and outside (*wai* 外) [of the Inner City] are different, and one institution does not govern the other. Hence, if a case of banditry or theft happens, it is difficult to investigate. From now on, the Three Patrolling and Arresting Battalions will also be administered by the Commander of Gendarmerie. Inside and outside of the capital city will be patrolled and scrutinized together. Because the responsibility will have been specified, it will be helpful to remove bandits and secure merchants and commoners. WE order the Nine Ministries, supervisor of the Heir Apparent and censors to jointly discuss how the Three Battalions' responsibilities should be merged or administered.

Sixteen days later, the Nine Ministers and other various capital officials, by following Kangxi's decree, suggested that the Three Patrolling and Arrest Battalions be administered by the Commander of Gendarmerie; that affairs administered by the Supervisory Yamen

¹⁴¹ There were only two battalions in the early Shunzhi period. In 1657, the Qing court established the Central Battalion. Before 1654, these battalions were under control of the Board of War. From 1654 to 1691, these battalions were under control of the Supervisory Yamen on Arrests – a subordinate institution under the Board of War.

¹⁴² In many Qing records, Jingcheng or the capital city usually refers to the Inner City. The term *chengnei* refers to place inside the Inner City.

on Arrest, Censorate, and the Five Wards be transferred to the Commander of the Gendarmerie; and that escapee and bandit criminals caught by the Three Patrolling and Arresting Battalions be sent to the Supervisory Yamen on Arrests or the Board of Punishment. Kangxi approved such suggestions (QSL, KX, vol. 150: 665). In practice, however, the Five Wards continued functioning as a police and juridical institution and it was not replaced by the Commander of Gendarmerie.

By incorporating of the Three Patrolling and Arresting Battalions under the authority of the Commander of Gendarmerie, the Qing court actually broke its segregation policy in the police field. Before 1691, the major police force inside the Inner City, where bannermen lived, was the banner infantries; outside the Inner City, where civilians resided, was the Green Standard patrolling and arresting soldiers. The Commander of Gendarmerie administered the whole Jingshi, both inside and outside the Inner City. The Kangxi emperor's edict clearly demonstrates that the segregation accounted for the inconvenient management which further accounted for the incorporation of two separate police forces. Therefore, segregation was not the priority when it hampered the efficiency of the city management.

II. Severity of offenses substituting for legal identities

As discussed in the previous chapters, the legal identities of involved parties' —in this case bannermen or civilians—played an important role to decide where a minor case should be adjudicated during the early Shunzhi period. During the Kangxi reign, legal identity was deemphasized.

The two major institutions, the Five Wards and the Commander of Gendarmerie, could conclude any regular minor cases. In 1661,¹⁴³ the Five Wards was only required to send cases punishable by penal servitude or above to the Board (QDTG, vol. 5). This regulation was emphasized again and again in 1672, 1688, and 1774 (GXHDSL, vol. 1031: 348-350). In 1674 when the Yamen of Commander of Gendarmerie was just established, the Qing court possibly granted it the power to conclude minor cases (GXHDSL, 1158: 534).¹⁴⁴ The Gendarmerie could adjudicate any ordinary minor cases.

As discussed in the previous chapters, when the Five Wards or the Commander of Gendarmerie sent major cases to the Board of Punishment, they neither charged crimes nor recommended sentences. What was considered a major case might turn out to be a minor one (Hu, 2007: 43, 50). Cases in which the culprit could *probably* be sentenced to penal servitude were called “ambiguous cases” (*yisi anjian* 疑似案件). The Qing court established numerous regulations to deal with these. In 1747 and 1774, the Qing court twice emphasized that the Five Wards and the Yamen of Commander of Gendarmerie must send major and “ambiguous cases” to the Board of Punishment. In 1813, the Qing court emphasized that the preliminary courts like the Five Wards could neither send minor nor “ambiguous cases” to the Board nor adjudicate major cases (DC, 411.35). The 1813 regulation was reemphasized in 1831 (GXHDSL, vol. 1031: 354).

¹⁴³ I need to reemphasize that in the eighteenth year of the Shunzhi reign (1661) the Qing dynasty was ruled by the Oboi Regent because Shunzhi died at the beginning of the lunar year.

¹⁴⁴ I doubt the accuracy of the record in the *Daqing huidian shili* because it stipulated that the Yamen of Commander of Gendarmerie could conclude minor cases caught by the Three Battalions. As I discussed in Chapter Six, minor offenses caught by the Three Battalions should be sent to the Supervisory Yamen on Arrests or other institutions like the Five Wards. Therefore, the Qing possibly granted it the power to adjudicate minor cases in the Inner City where the banner infantry soldiers patrolled.

In addition to de-emphasizing the offender's legal identity, a case's location was also deemphasized. In other words, both the Five Wards and the Commander of Gendarmerie could conclude minor cases happening inside and outside of the Inner City.¹⁴⁵ The Commander of Gendarmerie's police forces were distributed in all three sections of Jingshi: the Inner City, the Outer City, and the *chengshu* area. It was a reasonable consequence that the Commander could conclude any regular minor case in Jingshi. The Five Wards mainly administered the area outside of the Inner City. But as their title indicated, censors of the Five Wards could deal with cases inside the Inner City.

In short, after the Shunzhi reign, where a case should be adjudicated was mainly determined by the offenders' possible punishment, not by his or her legal identity as bannermen or civilians. For both banner and civilian commoners, the different treatment under the law in juridical procedure disappeared during the Kangxi reign. Exceptions still existed, however. Neither the Five Wards nor the Commander of Gendarmerie could conclude any minor cases involving imperial clansmen or persons administered by the Imperial Household Department.

III. The Judicial Role of Institutions that Administered Bannermen

As already discussed, three major institutions administered bannermen in Jingshi, as well as in the empire: the Eight Banners, the Imperial Household Department, and the Imperial Clan Court. After the Shunzhi emperor's reign, these three institutions' judicial power changed. The Eight Banners initially grew in juridical power. But after the Yongzheng reign, the Eight Banners stopped serving as a major juridical institution. The

¹⁴⁵ Cases happened in the imperial palace of course were treated specifically.

Imperial Household Department, as the institution that managed the emperor's personal affairs, expanded its juridical power, and it could deal with any minor cases involving any person administered by it. The Imperial Clan Court, on the contrary, largely lost its independent status as a juridical yamen by the mid-Qing.

The Eight Banners

The commander of the Eight Banners surprisingly expanded its judicial power during the Kangxi reign. As discussed in Chapter Three, during the Shunzhi reign, company captains or *booi da* could conclude minor cases, the Banner Commander seldom participated in adjudication, and it did not serve as a level in the juridical system for bannerman cases. During the Kangxi reign, the Banner Commander expanded its juridical power. That is, the Banner Commander could conclude major cases punishably by penal servitude or exile and participated in the adjudication of capital cases.¹⁴⁶

During the Yongzheng reign, the Eight Banners were deprived of their much judicial power, and the banner system basically could only settle minor cases. This process began with the late Kangxi reign. In 1716, Kangxi decided that regular bannermen's capital cases should be co-adjudicated by the Board of Punishment and Banner Commanders (QSL, KX, vol. 269: 637). In 1733, the Qing court established a statute to regulate the Eight Banners' judicial power. The statute stated that cases concerning death or banditry, or cases involving civilians, should be sent to the Board of Punishment; that when the Eight

¹⁴⁶ When the Banner Commander first enjoyed such judicial power is not clear. Na Silu (1992: 155-7) argued that during the Shunzhi reign, it already had such power, but he does not provide any evidence from this era. As discussed in Chapter Three, I did not see any archival cases that indicate the Banner Commander adjudicated major cases during the Shunzhi reign. All cases Na Silu cites happened during the late Kangxi reign.

Banners adjudicated certain cases and application of torture was necessary, the Eight Banners must apply the torture together with officials from the Board of Punishment; that the Eight Banners could settle minor cases (GXHDSL, vol. 819: 939; Hu, 2007: 46). In 1735, a new statute clearly stated that the Eight Banners could only settle minor cases and all major cases must be adjudicated by the Board of Punishment (DC, 341.07, commentary; Hu, 2007: 46).

Henceforth, because bannermen could bring charges at other institutions like the Five Wards and the “police stations” under the Commander of Gendarmerie, most cases involving bannermen were not adjudicated by the Eight Banners. Emperor Qianlong once stated: “[T]he workload of the Eight Banners cannot compare with that of the six boards. Every Banner only has things like answering the appointment of officials. Other than that, they have few things to do” (QSL, QL, vol. 76: 203). Archival cases during the Guangxu period indicate that the every level of the administration of the Eight Banners worked more like communities than governmental courts. Based on limited available cases, the banner officials mediated, rather than adjudicated minor cases (Hu, 2010a: 15). No one denies that the banner system was the “root” or base of the Qing dynasty, but by the end of the Yongzheng reign, the Qing ruling house ruthlessly took most of the Eight Banners’ judicial power.

The Imperial Household Department

The Imperial Household Department expanded its judicial power. As discussed in Chapter Three, the Imperial Household Department could conclude minor cases involving only its own members (or the persons administered by the Department) during the Shunzhi

reign. If bannermen (not bondservants of the Upper Three Banners) or civilians and a person under the Imperial Household Department were involved in a minor case, the case must be sent to the Board of Punishment. The Imperial Household also must send major cases to the Board of Punishment. These Shunzhi era practices were codified during the Kangxi reign (KXHD, vol. 153: 7372-73).

By the mid-Qianlong reign, the Imperial Household Department could conclude any minor cases in which its members were involved (cases involving imperial clansmen were excluded). The sources I read did not spell out when the change happened. The Qianlong *Daqing huidian* which was published in 1764 still contained a regulation stipulating that the Imperial Household Department must send cases involving civilians to the Board of Punishment (QLHD, vol. 91: 8). But clearly, during the mid-Qianlong reign, the Imperial Household Department could in practice conclude minor cases involving civilians (Hu, 2007: 48).¹⁴⁷ The Jiaqing *Daqing huidian* confirmed this practice, and the new regulation stated that the Imperial Household Department could conclude minor cases involving civilians and only must send major cases to the Board of Punishment (JQHD, vol. 77: 3419; Hu, 2010a: 15). The Five Wards and the Commander of Gendarmerie received any case involving persons administered by the Imperial Household Department, they must send the case to either the Board of Punishment (major cases) or the Imperial Household Department (minor cases) (Hu, 2007: 48).

¹⁴⁷ In 1737, the Imperial Household Department adjudicated a major case in which a bannerman and a civilian were sentenced to penal servitude (NWFLW, 2108). This case was an exception. I will discuss it in detail.

The Imperial Clan Court

The Imperial Clan Court's judicial power was diminished by the Qianlong reign. The Court was established in 1653 (KXHD, vol. 1: 1). It was the most honorable and distinguished yamen in the Qing dynasty, whose status was above all other Qing institutions below the emperorship, including the Grand Secretariat.

The Imperial Clan Court had judicial power. According to a regulation established in 1657, "if Junwang (princes of the blood of the second degree) or above commit major crimes (*dazui* 大罪), [they shall be] summoned to the Imperial Clan Court for interrogation; minor crimes, interrogated in the princely household. Beile (Princes of the Blood of the third degree) and below (other imperial clansmen) shall all interrogated in the Imperial Clan Court" (KXHD, vol. 1: 19-20; QSL, SZ, vol. 113: 888). Cases during Shunzhi and Kangxi eras demonstrate that the Imperial Court sometimes independently adjudicated imperial clansmen's cases (e.g. QSL, SZ, vol. 70: 550; vol. 113: 884; KX, vol. 25: 348; vol. 130: 395).¹⁴⁸

The Qing court restricted Imperial Clan Court's judicial power. Largely speaking, it seldom solely adjudicated cases any more. Any cases involving imperial clansmen must be co-adjudicated by the Board of the Punishments (or the Board of Revenue for land and household cases) and the Imperial Clan Court together.¹⁴⁹ Though neither the Yongzheng nor the Qianlong *Daqing huidian* record this change, the Jiaqing *Daqing huidian* does. But

¹⁴⁸ The Deliberative Council (e.g. QSL, KX, vol. 93: 1173-4) and the Board of Punishment (e.g. QSL, SZ, vol. 65: 511) sometimes adjudicated cases involving the imperial clansmen. Some cases were adjudicated by the Imperial Clan Court and other institutions like the Deliberative Council together (e.g. QSL, KX, vol. 103: 47).

¹⁴⁹ Even minor cases were co-adjudicated by both the Imperial Clan Court and the Board of Punishment. In practice, the Court adjudicated a few minor cases (Hu, 2007: 47).

archive cases demonstrate that the Court co-adjudicated cases with the Board of Punishment as early as 1749 (Hu, 2007: 47).

During the process of co-adjudication, the Imperial Clan Court played a much less important role than that of either the Board of Punishment or the Board of Revenue. The Board of Punishment made decisions on the nature of the crime and recommended sentences in accordance with the Qing code or other Qing laws, and then the Imperial Clan Court, usually based on the regulations of the *Substatutes of the Imperial Clan Court*, implemented or commuted the imperial clansmen's penalties (e.g. NGTB, 4046-12; ZRFLW, 559). If it was a land case, the Board of Revenue made sentences, and the Imperial Clans Court (or other relevant yamens, like counties) implemented them.

In short, even the Imperial Clan Court enjoyed a status higher than any other institutions below the emperorship in Qing China, the monarch still deprived of it of much of its juridical power. Taking the institutions that administered bannermen together, we see that both the Eight Banners and the Court's judicial power were weakened while the Imperial Household Department's strengthened. Such different approaches of change were in accordance with the processes by which the monarch took other banner lords' power. The general tendency was the trial of cases involving bannermen became more and more “normal.” This was part of the story I call “normalization” of law in Qing China.

IV. Normalization of the law

During the Qing dynasty, legal distinctions distinction between Manchu and Han gradually diminished, or in some aspects, even disappeared. I call the processes the normalization of the law. It implies two different but related aspects. First, the Qing ruling

house diminished bannermen's legal privileges and treated bannermen and civilians more and more "equally" below the law. Second, the Qing court gradually diminished the banner nobles' legal privileges and thus destabilized the old Confucian hierarchal societal structure. This dissertation will address the two aspects.

Bannermen

Two aspects of the normalization of the law are worth discussing in detail: that the bannermen's judicial procedures for bannermen became "normal" and commutation of penalties for bannermen became less frequent, until they were treated "almost" as civilians by 1825.

First, the Qing court gradually dealt with cases involving bannermen "normally." As discussed that during the Kangxi reign, it was not an offender's legal status but the possible penalty that decided where a case involving bannermen was adjudicated; the Eight Banners did not serve as the primary courts for bannermen; the Imperial Household Department could conclude minor cases involving both bannermen and civilians; the Imperial Clan Court lost its power as an independent court. The previous chapter has demonstrated that after 1656, minor fugitive cases outside Jingshi were gradually dealt with by local officials instead of being sent to the Board of Punishment in Jingshi as immediate examining cases. Minor non-fugitive cases also experienced the same process, and they were not immediate examining cases any more. Cases involving Zhufang bannermen, or the bannermen stationed outside Jingshi, were handled similarly to civilians' cases. In theory, all bannermen were residents of Jingshi, but in practice,

Zhufang bannermen were actually “localized.”¹⁵⁰ In a word, the Qing court gradually treated bannermen and civilians more and more similarly in terms of judicial procedure.¹⁵¹

Second, the Qing court also gradually restricted bannermen’s privileges of commuting penalties. When the Qing court abolished its Manchu two degree penal system and recognized the authority of the five punishments in 1656, as a compromise, bannermen just nominally submitted to the Han penal system. When bannermen were sentenced to penal servitude or exile, punishment was routinely commuted to the cangue. The commutation was a privilege. After several revisions, the 1656 regulation became a formal statute “committing crimes and avoiding banishment” in 1725 (DC, 009.00 commentary). However, from the Kangxi reign on, the Qing court also had gradually restricted the application of this privilege. Su Qin and Lin Qian clearly delineate the changes of the application. During Qianlong reign, slaves under the banner system basically lost this privilege and received banishment if they received penalties of penal servitude or exile. The Qing court also restricted the application of this privilege for regular bannermen. The convicted bannermen could be removed from the banner rolls (*qidang* 旗档) and be banished instead of wearing the cangue (Su, 1992: 81; Lin, 2004:

¹⁵⁰ Even though zhufang bannermen were not governed by civil administration in the provinces or in Manchuria, cases involving zhufang bannermen were treated similar with cases involving civilians. Both were firstly dealt with by banner or civil officials in the provinces. Minor cases involving bannermen were not sent to the Board of Punishment in Jingshi as immediate examining cases even though all bannermen were Jingshi residents in theory, and major cases must be sent to Jingshi. Wang Liping (2007: 191-193) notices that zhufang bannermen in Hangzhou also experienced the process of localization.

¹⁵¹ The imperial clansmen and bondservants of the Upper Three Banners were still treated specially, but the imperial clansmen were always treated particularly in any dynasty, and bondservants of the Upper Three Banners were treated differently mainly because they were the emperor’s personal servants, not exactly because they were bannermen. Eunuchs and monks administered by the Imperial Household Department were treated the same with the bondservants in terms of the judicial procedure.

44-45). The most drastic change happened in 1825, when a substature came close to abrogating the statute. The substature states:

Any bannerman who harbors pilferers, prostitutes, gamblers, or brings a false litigation, commits blackmail, habitually behaves in a careless manner and acts as ruffians, or harasses others like rootless rascals, lures imperial clansmen to commit offenses, produces or sells gambling devices, uses fake silver, fakes contract, paints money-ticket, [or commits] any crimes of swindling money, or the crime treated as theft, or commits crimes of abduction or rape, of having illicit sex with kin members, shall be *removed from banner rolls*, and be punished in accordance with that of civilians. If he receive the punishment of penal servitude, exile, military exile, or military exile as slaves, he shall be banished in accordance to the sentences and the punishments shall not be commuted to the wearing a cangue (DC, 009.05).

Xue Yunsheng argues that bannermen were almost treated as civilians in accordance with this substature (DC, 009.05 commentary).¹⁵² Lin Qian and argues that this substature demolished the basic principles of the statute “Committing Crimes and Avoiding Banishment.”

Imperial clansmen

Not only were regular and low-status bannermen’s legal privileges gradually restricted, but so were those of the imperial clansmen. The imperial clansmen had two sometimes conflicting identities: that of the Confucian aristocrats and that of the Manchu nobles. In imperial China, the imperial lineage had always enjoyed privileges. Such privileges accorded with Confucianism (Ch’ü, 1961: 177), I consider the imperial clansmen as Confucian aristocrats in this regard. However, to some extent, the imperial lineage’s privilege in the Qing dynasty reflected Manchu’s special status because they were, in any case, the most privileged Manchus. Therefore, the curtailment of imperial

¹⁵² I need to emphasize that bannermen still enjoyed the privilege of commuting penalties in accordance with the statute since the 1825 substature did not cover all crimes.

clansmen's legal privileges, as an example of normalization of the law, reflects not only the intention and practice of reducing and even eliminating the gap between bannermen and civilians but also of deemphasizing the Confucian status hierarchy in more general sense.

Generally speaking, the Qing court punished imperial clansmen leniently during the Shunzhi and Kangxi reigns. According to the Kangxi *Daqing huidian*, a regulation established at the beginning of the Qing dynasty stated “if princes, *beile* (Princes of the Blood of the third degree), *beizi* (Prince of the Blood of the fourth degree), etc., commit offenses (*guofan* 过犯), the offenders will be deprived of retainers, or pay a fine as redemption. They will not be sentenced to death, nor be imprisoned. Crimes like rebellion are excluded” (KXHD, vol.1: 19).¹⁵³

However, the Oboi Regency punished the imperial clansman harshly. In 1661, the Qing court established a regulation saying that if any *zongzhi* committed crimes, he would be deprived of the status as a *zongshi*. In 1669, the year when the Kangxi emperor removed Oboi from the office, the Qing court abolished the 1661 regulation so that no *zongshi* could not be stripped of his status (KXHD, vol. 1: 20).

On the first day of the twelfth month, in the sixty-first year of the Kangxi reign (January 7, 1723), the newly enthroned Yongzheng Emperor instructed (*yu*) the imperial clansmen: “[O]ur late father was extremely benevolent and generous. He deeply graced all branches of the imperial lineage. For every *zongshi* and *jueluo*, serious crimes were

¹⁵³ The Guangxu *Huidian shili* stated that “[If an imperial clansman] from prince to *zongshi* commits offenses, the offender can be deprived of retainers, or pay a fine instead of enduring a whipping. Unless he commits a severe crime of treason or unfiliality, an imperial clansman will not be sentenced to death, nor be imprisoned in the (prison of the) Department of Punishment (GXHDSL, vol.10: 140).

punished lightly; minor crimes were pardoned; no one was executed in the past years; only when there was no other choices [crimes were unpardonable], were the offenders punished to confinement [in the empty house] (*quanjin* 圈禁)” (QSL, YZ, vol. 2: 46).¹⁵⁴ Cases during the Kangxi reign show that the imperial clansmen's punishment was largely at the hand of the monarch and the monarch generally punished the convicted imperial clansmen very lightly.

Beginning with the Yongzheng reign, the Qing court promulgated many laws to specify the punishment for the imperial lineage and according to these laws, the imperial clansmen were punished more and more severely. In 1734, the Qing court established a regulation to commute punishment¹⁵⁵ for the imperial lineage and revised it several times thereafter. If an imperial clansman was sentenced to penal servitude or more severe, his punishment would be commuted to confinement in the empty house; if he was sentenced to the beating with bamboo, his punishment would be commuted to a fine of confiscating his stipends and grain subsidies (GXHDSL, vol. 10: 140-1).¹⁵⁶ The basis of the communication was the five punishments in the Qing code. This demonstrates that at latest in 1734, the Qing court placed the imperial clansmen under the mandate of the Qing code in deciding the nature of the crime. During the Daoguang period, the Qing court further stipulated that if the crime was really serious, or a member of the imperial lineage violated the law a second time (the same law or a different one as well), he would be banished to Manchuria. The more serious the crime, the more distant was the place of banishment (GXHDSL, vol. 10: 148; DC, 004.03).

¹⁵⁴ “Empty house” or “empty room” (*kongshi*), was a special prison for imperial clansmen.

¹⁵⁵ The capital punishment usually was excluded from commutation and a statute was established during the Daoguang reign. See DC, 004.03; GXZRFZL, vol. 30.

¹⁵⁶ All adult imperial clansmen received stipends and grain subsidies. See Rawski (1998: 75).

Subsequently, the emperor was less personally involved in punishing the imperial lineage, and the court reduced imperial clansmen's legal privileges in many areas. In 1808, the Qing court added a substature (DC, 004.04) to the Qing code saying that if an imperial clansman committed crimes punishable by penal servitude or lesser degree, the case should not be individually memorialized to the emperor.¹⁵⁷ Only if he committed a crime punishable by exile or higher degree, would the case be individually sent to the emperor. If the crime was penal servitude, the punishment immediately became effective and the Board of Punishment just memorialized the case with other cases every quarter. Minor cases were not required to be individually memorialized. In other words, if an imperial clansman without any titles or official posts committed crimes punishable by penal servitude or less severe, the Board of Punishment and the Imperial Clan Court's sentences immediately became effective without the emperor's approval. But for those clansmen with titles or official posts, any punishment still must be approved by the emperor. The above regulations show that the Qing emperor gradually brought the imperial lineage under the bureaucratic rule, and he would not personally intervene in every case.

From the Qianlong reign, the Qing court also restricted the imperial clansman's legal privilege of commutation. A special statute concerning beating of imperial clansmen in the Qing code (DC, 305.00) imposed much harsher punishments on those who beat an imperial clansman than those who beat a commoner. In 1765, the Qianlong emperor promulgated a substature saying that if an imperial clansman who did not "wear the

¹⁵⁷ Because of the imperial clansmen's privileged status, cases involving them were usually sent to the emperor for approval.

yellow or red belt”¹⁵⁸ was wounded, the offender would be punished as if the imperial clansman was a commoner (QLZRFZL, vol. 15: 114). In 1778, a regulation further stated that if an imperial clansman was “not in accordance with his status” and initiated an affray with someone else, the case would be sentenced as an affray between commoners regardless of whether he wore the yellow or red belt; if the imperial clansman was sentenced to exile, military exile, or penal servitude, the penalties could still be commuted to imprisonment in the “empty” house, but if he was sentenced to beating with bamboo, there would be no commutation (QLZRFZL, vol. 15: 115).

In 1814, the nineteenth year of the Jiaqing reign, the Qing emperor further stipulated that if a *zongshi* was summoned to a court, he would be temporarily stripped of his official cap,¹⁵⁹ and just like a commoner, whoever the jurists were, he must kneel down before the jurists on trial. If he was found innocent, he would be given back the official cap after the emperor’s approval. This regulation was added to the Qing code as a statute (DC, 004.06). This statute not only restricted a Manchu noble’s privilege, but also violated the Confucian rite: before verified to be innocent, an imperial clansman must kneel down before a jurist who might enjoy a low status.

During the Daoguang reign, restrictions on such privileges were more than before. There were ten statutes under the statute “those who deserve ‘eight considerations’ (*ba yi* 八议) commit offenses” (*yingyizhe fanzui* 应议者犯罪). Three (DC, 004.02, 07, 10) were added to the Qing code during the Qianlong reigns; three (DC, 004.04-06) during the Jiaqing reign; four during the Daoguang reign (DC, 004.03, 08, 09, 11). None of these

¹⁵⁸ The yellow or red belt indicated the imperial lineage's distinguished status, and this regulation itself was in many ways a restriction.

¹⁵⁹ An adult *zongshi* was usually awarded an official cap of the fourth degree.

substatutes positively/favorable protected imperial clansmen's privileges. Three regulations, one created during the Qianlong reign and two during the Jiaqing reign were “neutral” (DC, 004.02, 04, 05). Seven substatutes (DC, 004.03, 06-11) clearly restricted the imperial lineage's privileges. The four Daoguang substatutes restricted the imperial lineage's privileges. It was clear that the emphasis of legislation on the imperial lineage transferred from regulating the imperial clansman to restricting their privileges during the Daoguang reign.¹⁶⁰

The most notable regulation was established in 1825. The Daoguang emperor approved a substatute saying that if a *zongshi* or *jueluo* committed a crime which was “not in accordance with his status” or *bu’anbenfen* 不安本分, the punishment of beating with the heavy bamboo would be implemented (instead of commuting). The punishments of cangue, penal servitude, exile, and military exile could be commuted to confinement in the empty house (GXZRFZL, vol.29). The term *bu’anbenfen* referred to the situation in which an imperial clansman committed crimes intentionally, and if an imperial clansman committed crimes unintentionally, the punishment of beating with bamboo could still be commuted to a fine (DGZEFZL, vol. 29: 13b). This regulation treated imperial clansmen without titles and official posts as de facto commoners when they committed minor offenses.

Also surprisingly, the Qing court punished imperial clansmen by beating with bamboos instead of slashing with the whip. When the Qing court decided to deprive of the imperial clansmen of the privilege of commutation, it chose beating with the bamboo. As the most privileged banner men, the imperial clansmen should be punished by lashing with

¹⁶⁰ The two processes of course were inseparable.

the whip (like regular bannermen).¹⁶¹ Various regulations (e.g. GXZRFZL, 754; DC, 004.09), including the above 1825 one, clearly stated that an imperial clansman would be beaten with bamboos. In practice, the imperial clansmen were beaten with bamboos when they committed certain crimes (e.g. BQDTYM, 529). Thus, in this sense, the Qing court considered the imperial lineage more like Confucian aristocrats than Manchu or banner nobles.¹⁶²

Even without statistical evidence, the tone of Qing legislation clearly demonstrated that the Qing ruling house portrayed itself as a Confucian ruler for both Manchu and Han and tried to stop bannermen from decadence. For example, in 1829, the Qing court promulgated a statute that prohibited imperial clansmen from intervening in any unrelated litigation. The statute imposed very severe punishments on any imperial clansman who falsely accused anyone else or intervened into an unrelated litigation (GXZRFZL, vol. 31). The statute clearly states that an increase in false accusation by imperial clansman had led to the establishment of this statute, and the legislation intention clearly upheld the Confucian ethic of anti-litigation in order to save the imperial clansmen from decadence.¹⁶³

¹⁶¹ After the Qing court deprived of an imperial clansman of his privilege when he committed severe crimes, he still enjoyed a status similar to a regular bannerman (GXHDSL, vol. 10: 150-1).

¹⁶² Mark Elliot mentions that Bodde and Morris “note that in fact high-ranking imperial Manchu clansmen could be beaten with the bamboo.” Elliott comments, Bodd and Morris overlooks that “commutation was a privilege, not a right, and therefore revocable” (Elliott, 2001: 450-451). Bodde and Morris (1967: 170) note that an imperial clansman received beating with the heavy bamboo.

¹⁶³ Many statutes also intended to uphold Confucian ethics by restricting bannermen's privileges. For example, a statute from 1754 stated that any bannerman who beat junior family members did not automatically enjoy the privilege of commutation. Clearly, killing a junior family member violated the Confucian ethic of family harmony. A 1789 statute stipulated that any *linghu* 另户 fugitive bannerman from Jingshi who did not cherish his prestige as a bannerman (*bugu yanmian* 不顾颜面) and worked as an employee would be removed from the banner rolls and would receive military exile to places like Heilongjiang. A statute from 1825 stated that

Restricting the imperial lineage's legal privileges reflected the internal conflicts inside the Confucianism. As T'ung-Tsu Ch'ü (1961: 177-185, 280) has demonstrated, after the fully development of the Confucianization of law in the Sui (581-618) and Tang dynasty (618-907), the law in traditional China recognized the privileges of nobles and officials and corresponded with the doctrine of Confucianism. As Manchu nobles, the Qing imperial clansmen deserved “eight considerations,” but as discussed, many statutes in the Qing code and articles in the *Substatutes of the Imperial Clan Court* actually restricted their privileges by applying other aspects of the Confucian doctrines – they included but were not limited to that nobles should maintain a higher moral standards.

In sum, even though the Qing dynasty could be considered a Manchu dynasty, it still ruthlessly restricted the most privileged Manchus' privileges and deprived the Imperial Clan Court of much judicial power. The restriction on the imperial clansman's legal privileges violated not only the so-called conquest elite's interest but damaged the Confucian societal hierarchy. More ironically, the restriction was applauded by both Manchu and Han officials. However, the imperial lineage was always at the top of the Qing hierarchical society. They always enjoyed privileges. What I disclose was the processes through which their privileges were more and more restricted.

The normalization was also caused by a realistic problem of bannermen's livelihood, by Qing ruling house's concern about the unified judicial system, and by a fear (also a reality) of bannermen's decadence. The Qing court could not continually extract from the Han people to feed the expanding banner population. It was not strange that the Qing court

any bannerman who worked as an actor in order to survive from poverty would, together with his sons and grandsons, be removed from the banner rolls. These two statutes clearly upheld the Confucian status hierarchy.

loosened the fugitive law and actually permitted bannermen to leave the banner system. Normalization of the law in Qing China revealed that the Qing court consistently adjusted its Manchuness and accustomed to Han society. By diminishing the bannerman's legal privileges, the Qing emperor served more and more like the ruler to all under Heaven, not just the protector of Manchus; by doing so, the Qing court also altered China's traditional social hierarchy.

The processes of normalization indicate that there was a great transition in Qing legislation peaked in the Daoguang reign. The year of 1825 was of most significance. As discussed, in that year, the Qing court significantly changed its policy toward Manchu-Han relation and restricted bannermen's legal privileges: the legalization of the fugitive law basically allowed bannermen to leave the banner system; the 1825 statute attached to the statute "committing crimes and avoiding banishment" almost weakened the statute's principles of preserving bannermen's privileges of commutation; the imperial clansmen without titles or official posts lost his privilege of commutation when they intentionally committed minor offenses.

It is necessary to distinguish this term from "peasantization of the law" (Bernhardt, 1996: 56-8; Sommer, 2000: 14, 112). Both concepts notice the phenomenon that the Qing court treated its subjects in a more "egalitarian" manner, but they were caused by different motives. Peasantization of the law was caused by the state's acceptance and adoption of popular social practice of commoner peasants in imperial China. It demonstrated the state's concern about peasants, and it had began before the Qing dynasty, whereas the normalization of the law concerned the Qing court's consideration of Manchu-Han relations.

v. The “Web” Structure of the Judicial System in Qing Jingshi

Till now, I have describe that after the Shunzhi reign, the Qing court constantly restricted and diminished bannerman’s legal privileges. In terms of the juridical procedure, the legal identities as bannerman or civilian were gradually de-emphasized, and in Jingshi, severity of offenses had substituted for legal identities in deciding where a case should be adjudicated. The bannermen’s privilege of commutation was so severely weakened that Xue Yunsheng even argues that they were almost treated as civilians in accordance with the 1825 statute.

Historians have been long viewed the Qing judicial structure as simultaneously hierarchically and vertically arranged with the county magistrate at the bottom and the emperor at the top. Such a general description did not fit into the judicial structure in Jingshi where the judicial system was composed of various institutions that shared responsibilities and power. One major characteristic of the judicial system in Jingshi is that all involved institutions were branches of the Qing central government, and they were directly responsible to the emperor. The relations among these institutions were horizontal. As mentioned in the Introduction, the “web” structure originated in the Shunzhi reign and reached its final form during the middle Qianlong reign.

It is necessary to clarify two points that first, there was a clear hierarchy among these institutions, but in the judicial system, their relations were not vertical; and second, the practice that the preliminary courts like the Five Wards must send major cases to the Board of Punishment does not mean the relation between them was hierarchical or vertical. For the first point, it is well known that the Imperial Clan Court enjoyed the highest status

below the emperorship, and that other institutions enjoyed different statuses in Qing China, but none of them (except for the Five Wards that affiliated to the Censorate) were affiliated itself with and responsible for the other.¹⁶⁴ Even for the Five Wards whose status was the lowest among the judicial institutions in Jingshi, censors of the Five Wards were not responsible to the Censorate, or any other yamens. It thus will be no surprise that even though the preliminary courts must send major cases to the Board of Punishment, or similarly, sent banner land and banner marriage cases that they could not settle to the Board of Revenue, the relation between the preliminary and the two boards was horizontal instead of vertical.¹⁶⁵ In the system, there was a division of work between preliminary courts and the two boards.

The “web” structure of the juridical system in Jingshi was caused by the combination of Ming and Manchu institutions. The Qing court formally broke the monopoly of judicial power held by the Three High Courts but maintained and revised the Five Wards, the Imperial Clan Court, Board of Punishment, and the Three High Courts. The Qing dynasty created the Imperial Household Department, the Eight Banners, and the Commander-general of Metropolitan Infantry Brigade. Probably except for the Eight Banners, other institutions could all resolve relevant cases involving both bannermen and civilians.

¹⁶⁴ One of the Censorate's duties was to regularly supervise or examine other institutions' work. This duty was in essence outside of the judicial system.

¹⁶⁵ A similar example was the relation between provincial governors or governors-general in the provinces and the Board of Punishment. Both governors and ministers of the Board of Punishment were directly responsible to the emperor and there was no vertical or hierarchical relation between them, even though the governor must send exile or capital cases to the Board of Punishment for review or re-trial (Zheng, 1988: 151).

As discussed in Chapter Three, the Qing judicial system in many ways inherited and revised the Ming system. The web structure showed improvements over the Ming system. First, the Qing ruling house actually inherited and institutionalized the Ming practice. The Ming emperor had broken the monopoly of the Three High Courts by granting the Jinyi Wei and other institutions the actual judicial power, which disrespected the formal system. The Qing emperor formally granted the preliminary courts the judicial power in the formal system. The expansion of the judicial power of the Five Wards clearly demonstrated the Ming practice developed into a formal system. Second, the Qing emperor respected the formal judicial system and never developed any institutions like the Ming Jinyi Wei or Dongchang. Third, the Qing emperor did not need to approve every single case originating in Jingshi by having the preliminary courts and the Board of Punishment conclude minor cases. Fourth, the Qing court did not enforce review procedures except for some capital cases, which prompted efficiency. For major cases, the preliminary courts did not charge crimes, and only the Board of Punishment could adjudicate ordinary exile and penal servitude cases. The web judicial structure enabled the Qing emperor to hold the power and to avoid the Ming malfunctions.

The web structure was not perfect, however, and collisions were inevitable. Collisions existed between any two institutions. The collisions partly were partly due to the ambiguity of the division of work and partly due to the lack of independence of the judiciary. Because the Board of Punishment was the legal and judicial center in all under Heaven, it was more likely confronted with other yamens. The collision was always concerned power or duty, two aspects of the nature of job.

“Ambiguous cases:” the Board of Punishment versus the preliminary courts

The most obvious collision happened between the Board of Punishment and the preliminary courts like the Five Wards when the so-called “ambiguous cases” arose. These were cases in which the offender’s crime most likely warranted punishment by penal servitude. As discussed in Chapter Five, the preliminary courts must send major cases punishable by penal servitude or a higher degree to the Board of Punishment, and these courts neither charged crimes nor recommended sentences for any major cases. The problem was that punishments for some crimes called for the judge’s discretion, anything between 100 blows of the heavy bamboo and penal servitude. These cases were called “ambiguous cases.” The Qing ruling house worried both that the preliminary courts adjudicate a penal servitude case and that they might send a minor case to the Board. Both worries could be on the ground of the ambiguous cases.

The Qing court had been regularizing the division of work between the Board of Punishment and the preliminary courts from the Kangxi era to the Jiaqing era. The Qing court emphasized that the preliminary courts like the Five Wards should send ambiguous cases to the Board in the middle Qing period (Hu, 2010a: 17). In 1813, a statute in the Qing code formally regularized this practice: it states that these preliminary courts could neither send minor cases to the Board nor adjudicate major cases (DC, 411.35).

The statute appears not always to have worked. In practice, the preliminary courts continued to send minor cases to the Board of Punishment and more often than not the Board accepted them (Hu, 2010a: 19). However, when it came to the handling of major cases the statute was followed. Clearly, the concern that the preliminary courts not adjudicate major cases outweighed the one that minor case not be sent to the Board.

Sometimes, the Board and the preliminary courts disputed over whether a case was a major one (Hu, 2010a: 17-8).

In any case, the existence of ambiguous cases explains why the Board of Punishment, as the legal and judicial center of the Qing dynasty, handled a great number of minor cases originated in Jingshi. In fact, when ambiguous cases arose it was the systems preference that it be sent to the Board of Punishment. It was preferable that such a case be found a minor case and handled by the Board than a major case but handled by the preliminary courts.

Who should do what? The Board of Punishment wanted to “shift off” its duty

In 1683, there was a debate over the jurisdiction happened between the Board of Punishment and other parts of the bureaucracy. The Kangxi emperor ordered the Nine Ministries to make suggestions to promote the efficiency of the Board of Punishment. The Grand Secretaries and the Nine Ministries ascribed the Board’s ineffectiveness to the fact that other institutions sent culprits to the Board very slowly. They suggested that the Qing court set a time limitation for other institutions in and outside Jingshi to send culprits. The Board of Punishment however argued for an unambiguous division of labor. Each bureau or court was to handle the “affairs: ascribed to it by the regulations. Thus, litigation involving civil or military officials should be handled by the Board of Personal or the Board of Military; household and land cases by the Board of Revenue; fugitive cases by the Supervisory Yamen on Arrests; cases punishable by military exile or lesser degree by the Five Wards.” The Board’s suggestion gave up its much power or duty in Jingshi. The Nine Ministries totally gainsaid the Board’s proposal: “as far as officials’ cases are concerned, major cases and cases involving commoners have to be adjudicated and

concluded by the Board of Punishment; if a household and land case requires the application of torture, it has to be tried by the Board of Punishment; if a fugitive commits theft or other crimes, it is not convenient for the Supervisory Yamen on Arrests to conclude the case; military exile is only one degree less than death, it is not convenient for the Five Wards to conclude such a case.” The Kangxi emperor was mad with the Board’s proposal by saying that “if all litigations are respectively sent to each institution, what was the point [for the dynasty] to set up the Board of Punishment?” The emperor supported the Nine Ministries’ opinion, the Board’s duty retained, and other institutions were ordered to send culprits in time (KXQJZ, 1048-1051).

We do not know why the Board’s punishments’ proposed such a suggestion, but it was very clear that the Board of Punishment held a very heavy duty. The proposal concerned the division of power or duty among branches of the Qing central government. All other institutions mentioned in the proposal adjudicated certain cases. Probably, other institutions sent cases that they could not settle to the Board of Punishment. The Board so believed it was important to clarify the duty of each yamen, but its suggestion crossed the line permitted by the Qing system.

**You should not have done this: The Board of Punishment versus the
Commander-general of Metropolitan Infantry Brigade**

The Yamen of Commander-general of Metropolitan Infantry Brigade was the most far reaching and pervasive institution administering Jingshi. It was not strange that it sometimes challenged the Board of Punishment’s authority, even though the Board enjoyed a higher status in the Qing bureaucracy.

One typical example of frictions between the Board of Punishment and the Commander-general happened in 1706. The Commander-general Tao Heqi 陶和气 apprehended Dong Qing 董清 and sent him to the with an allegation that Dong bought and resold “new standard coin” (*xin zhiqian* 新制钱) money.¹⁶⁶ The Board of Punishment decided that Dong Qing was innocent and released him because the Board deemed that Dong just bought the money to use, not to resell. Tao Heqi was dissatisfied with the Board of Punishment’s sentences. He insisted that Dong resold the money. He sent an interrogatory letter to the Board. The Board however did not reply. The Commander-general then questioned the Board of Punishment at the meeting of Nine Ministries in which other officials supported the Commander-general. Both a vice minister of the Board of Punishment and Tao Heqi presented their positions before the Kangxi emperor on November 5, 1706. The emperor supported Tao Heqi, heavily criticized the Board of Punishment, and ordered the Censorate to consider the Board’s mistake.

We do not know whether Dong Qing resold the money or not, but the Commander-general was obviously entitled to challenge the Board of Punishment’s authority. The Commander-general’s question, however, was not out of line. Every official had the theoretical power or duty to disclose mistakes or problems of other institutions.

Whose power? The Board of Punishment versus the Imperial Household Department

It was very clear from the regulations contained in the *huidian* that the Board of Punishment had the power to adjudicate major cases while the Imperial Household Department did not have. Yet, as the institution that managed the emperor’s personal

¹⁶⁶ I did not find any relevant sources about this case.

property, the privy purse and affairs, the Imperial Household Department sometimes did adjudicate major cases and, moreover, passed judgement in accordance with the code (Hu, 2007: 48). Thus, while sentencing was based on the Qing code, the adjudication process itself violated judicial procedure. According to the *Daqing huidian* from the Kangxi to the Guangxu editions, the Imperial Household Department should send any major cases to the Board of Punishment. The Department's adjudication of major cases therefore impaired the Board of Punishment's authority.

Based on a limited number of available cases, we can see that the Board of Punishment usually accepted the Imperial Household Department's sentencing, but sometimes, the Board slightly protested against the adjudication. For example, in 1737, the Imperial Household Department sentenced a bannerman and a civilian to penal servitude in accordance with the Qing code. The Department sent the case to the Board of Punishment for implementation. After receiving the Department's sentence, the Board did not directly question the procedural justice. Instead, the Board asked whether the Department memorialized the case to the emperor¹⁶⁷ and if not if not how the Board should officially conclude the case. The problem the Board confronted was the violation of bureaucratic procedure (NWFLW, 2108). The Board's question implied that only the emperor could have the Imperial Household Department adjudicate a case punishable by penal servitude.

In another case, the Board of Punishment directly questioned the Imperial Household Department's legitimacy of adjudicating a major case. In 1903, the Imperial Household Department sentenced a bannerman to penal servitude for three years which was

¹⁶⁷ The emperor always enjoyed the privilege to break any juridical procedure.

commuted to wearing the cangue for 40 days. The culprit's mother stated that he was her sole son and asked that he be allowed to "remain at home to care for parents" (*liuyang* 留养). The Imperial Household Department could not find corresponding articles from the Qing code and informed the case to the Board of Punishment for suggestions. The Board of Punishment refused to let the culprit "remain at home to care for parents" and questioned the Imperial Household Department's legitimacy of adjudicating the case. The Board stated that according to the *Huidian*, the Imperial Household Department must send major cases to the Board, and that the Imperial Household Department's adjudication was not in accordance with the *Huidian*. The Board asked whether the Imperial Household Department established a different regulation and whether the emperor had approved the regulation. The Board further stated that, if there were no newly imperially approved regulations, this case could be concluded as the Imperial Household Department sentenced, but the Department should send major cases to the Board thereafter (NWFLW, 2363).

The fact that the Imperial Household Department adjudicated a few major cases reflects the Department's special relation with the emperor. However, it is necessary to emphasize that the above cases were exceptions, and the majority of major cases involving the Imperial Household Department's members were sent to the Board of Punishment. Even though persons administered by the Department were the emperor's personal servants, the Department followed the procedure for most cases. Even though the Department adjudicated a few major cases, the sentencing was strictly in accordance with the Qing code or other Qing laws. In other words, even the emperor's personal servants and slaves complied with the Qing law.

Whose duty? The Board versus the Imperial Clan Court

In 1826, the Board of Punishment and the Imperial Clan Court co-adjudicated a fugitive case in which an imperial clansman fled from home without permission more than one month. If a regular bannerman committed such a crime, he would be removed from the banner rolls, rendered a civilian, and registered under the civil administration in accordance with the fugitive law. However, an imperial clansman could not be removed from the banner rolls. The Board found no articles in Qing law to deal with such a case and suggested that the Imperial Clan Court draft a new regulation and add the regulation to the *Substatutes of the Imperial Clan Court*. After receiving the Board's suggestions, the Imperial Clan Court replied that the Board might either cite a precedent or make a new statute itself, and that the Court would then commute the culprit's punishments based on both the Board's sentences and the *Substatutes of the Imperial Clan Court* (ZRFLW, 557).

We do not know the outcome of the case. The debate centered on the division of work between the Imperial Clan Court and the Board of Punishment. The division was supposed to be very clear-cut: it was the Board's responsibility to decide the nature of the crime and to recommend punishments in accordance with the Qing code (or the fugitive law for this case). The correspondence between the Board and the Court also clearly indicates that it was the Board's duty to propose a revision of the code and the Court's duty to propose a revision of the *Substatutes of the Imperial Clan Court*. The fugitive's crime is very clear, but the Board could not decide the punishment of the crime since he was an imperial clansman.

VI. The Emperor and the Bureaucracy in the Judicial System

The emperor was the law-maker, the highest supervisor of judiciary and the chief-judge of the land. In terms of the crown-bureaucracy relation, he had two roles: the head of the bureaucracy and someone above the bureaucracy. The two roles represented two types of power: routine power held by the bureaucracy and arbitrary power held by the monarch.¹⁶⁸ The two roles sometimes conflicted, sometimes overlapped, and sometimes reinforced with one another.

As the head of the bureaucracy, the emperor was deeply involved in the routine affairs of Jingshi's judicial system. He held too much routine power. All major levels and departments of the juridical in Jingshi were directly responsible to him. All capital cases must be reported to him. Every single capital case must be approved by him. Minor cases adjudicated by the Board of Punishment and the Board of Revenue must be reported to him quarterly (Hu, 2010: 14). Ordinary penal servitude and exile cases must be reported to him quarterly (DC, 411. 36). Compared to the Ming emperor, the Qing emperor was less involved in juridical affairs, but the role he played as the head of the bureaucracy was not easy. There was no way for a single person to understand all memorials presented to him. Usually, he could only approve them. His power in the bureaucratic system, then, more often than not, was symbolic. As Philip Kuhn describes, the Qing monarch "found himself

¹⁶⁸ As illuminated by Philip Kuhn and Philip Huang's monographs, the Qing legal system can be split into two parts: the bureaucracy and the emperor. See, Kuhn, Philip A.: *Soulstealers: The Chinese Sorcery Scare of 1768* (1990), 188-190; Huang, Philip C.: *Civil Justice in China: Representation and Practice in the Qing* (1996), 229-233. On the one hand, the emperor can be considered the head of the bureaucracy; on the other hand, the emperor also enjoyed an extra-bureaucratic status.

‘functioning’ as a cog (albeit a bejeweled one) in a document-processing machine” (Kuhn, 1990: 190).

In most cases, the emperor’s double roles were identical. The handling of regular capital cases through the routine memorials demonstrated both the emperor’s sole power to execute a criminal and his role as the head of the bureaucracy. The emperor’s role as the head of the bureaucracy could service and reinforce his role as the ruler above the bureaucracy. In other words, routine power could be used to reinforce the arbitrary power. The Qing rulers were good at this usage. Zheng Qin (1988: 14-17) wonderfully illustrates the process in which the Yongzheng emperor executed Nian Gengyao 年羹尧. As a capable and arrogant minister, Nian was impeached by many officials after the emperor showed his distrust in him. The emperor sent signals to the officials, and everybody understood that it was the emperor’s will to remove and kill Nian, but the emperor did not execute Nian with his extra-bureaucratic power. Nian was impeached and was judged by the bureaucrats. In 1726, Nian was sentenced to immediate death by the Three High Courts in accordance with the Qing code. The Yongzheng emperor “benevolently” reduced the punishment by ordering Nian to commit suicide. The Yongzheng emperor’s double roles were clearly reversed. Upon receiving the recommended sentences from the Three High Courts, Yongzheng firstly portrayed himself as the head of the bureaucracy and Nian must be executed in accordance with the Qing code; then he used his extra-bureaucratic power to reduce Nian’s punishment to show his “benevolence.” In other words, it was the whole bureaucracy, including both the emperor and officials, who executed Nian. However, it was also clear that the Nian Gengyao case served the

monarch's arbitrary power even though the emperor used his arbitrary power to reduce Nian's punishment.

In many occasions, the throne uses the institution of the emperor to dominate the bureaucracy. For example, in 1819, the emperor decided the sentence of a case and his decision received no opposition from the bureaucracy. In this case, imperial clansman Dunzhu 敦住 had sex with the woman Li Kang Shi 李康氏 and brought her home as a hired labor. Dunzhu's father Xifu 喜福 also had sex with Li Kang Shi after she moved into the house. Xifu's wife Tatana 塔他拉氏 remonstrated with Xifu and tried to expel Li Kang Shi, but Xifu and Dunzhu refused. On May 13, 1819, Xifu beat and wounded his wife because she had scolded Li Kang Shi. The next day Xifu ordered Li Kang Shi to strangle his wife. Upon receiving Xifu's order, Li Kang Shi told it to Dunzhu, and Dunzhu replied: "my mother has been beaten and will die. You can do whatever you want." Then, Li Kang Shi strangled Tatana Shi. Xifu tried to cover the causation of his wife's death but the court in Shengjing did not believe Xifu's explanation. The Shengjing General Saichonga 赛冲阿 reported this case to the emperor through a secret memorial. After reading the secret memorial, the Jiaqing emperor did not forward the case to the Board of Punishment or the Imperial Clan Court. Instead, he issued an edict to the ministers of the Grand Council on June 20, 1819. In the edict, the emperor directly recommended punishments: Xifu, as an evil and licentious ruffian, should be sentenced to strangulation without detention; because Dunzhu did not do anything when Li Kang Shi told him that his father order her to strangle his mother, he should be sentenced to death by slicing in accordance with the code, but since there was not a precedent to punish a zongshi by death

by slicing, Dunzhu would be heavily beaten by one hundred strokes of the heavy bamboo until his flesh shredded (Xifu must watch the beating) and be strangled together with his father; Li Kang Shi, who strangled Tatana Shi and caused the deaths of three persons because of her sluttiness, should be beheaded without detention. The emperor ordered the Shengjing General to try this case. The Shengjing General highly praised the emperor's instructions by saying that the edict "demonstrates My Majesty's upmost determination to rectify human relations (*lunchang* 伦常) by punishing the lascivious and the cruel." The Shengjing General adjudicated this case and recommended punishments as exactly the emperor suggested. On July 13, 1819, the emperor approved the Shengjing General's (or his own) sentencing. Copies of case files were also sent to the Board of Punishment and the Imperial Clan Court (JJCLF, 2322-024; QSL, JQ, vol. 357: 717-8).

In this case, the monarch totally dominated the bureaucracy, and the emperor in many ways ignored the law but upheld the Confucian ethics. As a capital case involving two imperial clansmen, it should have been co-adjudicated, or at least been reviewed, by the Board of Punishment and the Imperial Clan Court, but the two institutions were just informed. The emperor did not directly kill the three culprits, but his opinion received no opposition from the Shengjing General, and the three culprits were sentenced exactly as the emperor wanted. The Shengjing General even highly praised the emperor's determination of upholding Confucian ethics. Except that both the emperor and the general mentioned that Dunzhu would have been sentenced to death by slicing in accordance with the code, the sentence did not refer to any law. The emperor legitimized his sentencing by Confucianism. He emphasized that the father and the son slept with one woman, which damaged the properly human relation and humiliated the imperial lineage,

and that Li Kang Shi's illicit behavior cost three persons of their life. By doing so, the emperor actually adjudicated this capital case with Confucian ethics and discarded both the bureaucratic rule and the law. In short, no matter how much civil officials demurred, the emperor saw himself not just the head of the bureaucracy who should follow the bureaucratic rules but someone above the bureaucracy who was able to break the bureaucratic rule and to uphold the Confucianism.

The emperor's Manchu identity complicated the crown-minister relation. Through the window of the change of the juridical system in Jingshi, this dissertation demonstrates that inside the banner system, the emperor applied the Han bureaucratic principles to take banner lords' juridical power and folded the Manchu nobility into the bureaucracy. When maintaining the Manchu legal privileges conflicted with Confucian ethics, the ruler in many cases preferred the latter.

As this chapter has shown, despite the collisions between the institutions, the juridical structure in Jingshi showed its super-stability between the middle Qianlong reign and 1900. Even the Taiping Movement (1851-1864) that endangered the security of Jingshi did not impact the juridical structure (Hu, 2011a). Once in place, the late Qing emperors repeatedly tried to rectify the officials and the runners instead of revising the web structure (e.g. QSL, DG, vol. 22: 393-5). The stability of the juridical structure contrasted with the constant changeability of the Qing law. This discrepancy between unchanging juridical structure and changing law in the post-Qianlong reign reflected the Qing ruling house's consideration of what was possible. The web structure that perfected during the mid-Qianlong reign mainly reflected the Qing adaptation of the Ming system, and the constant change of the law reflected Qing adjustment of its policies to Han society.

In this study, we see how change came at the cost of Manchu or bannermen's legal privileges.

Thus, the history of the Qing juridical system in Qing Jingshi was the story of the Qing ruling house abandoning its Manchu tradition, restricting the Manchu legal privileges, and broadening the scope of Han juridical principles. Without exception, Qing rulers moved toward these ends. Dorgon abandoned many Manchu penalties that Han officials considered inappropriate. Shunzhi placed Manchus under the mandate of the Qing code; Oboi relaxed the fugitive law as Han officials wished. Kangxi, Yongzheng and Qianlong constantly revised the fugitive law in favor of the Han. Yongzheng and Qianlong abrogated the juridical power of the Eight Banners. The Yongzheng, Qianlong, Jiaqing, and Daoguang emperors, and those that followed, all restricted bannermen's legal privileges. As a result, bannermen were treated more and more like civilians.

Thus, the juridical system in Qing Jingshi tells the Manchu-Han relation in the juridical area. The changes sometimes were gradual, sometimes radical, but each change consisted of a step in which Han law trumped Manchu legal heritage. The Qing dynasty ruled both Han and Manchu—the two most important peoples in the realm—through Han juridical system. As a dynasty ruled by Manchus, the Manchu juridical traditions and privileges faded and the Han one grew throughout the whole dynasty. Both sinicization and maintaining Manchu identity were Qing court policies, but the former overwhelmed the latter in the juridical area throughout the dynasty. In this sense, sinicization was the key to understanding the miracle of the Qing rule.

Chinese Character Glossary

- angbang zhangjing 昂邦章京
anjian 案件
bafu 八府
baojia 保甲
baqi 八旗
baoyi angbang 包衣昂邦
baoyi da 包衣大
baqi dutong yamen 八旗都统衙门
ba yi 八议
Beijing 北京
beile 贝勒
benlü 本律
bi 婢
bianyuan 边远
bingke you 兵科
bingmasi zhihui 兵马司指挥
bingmasi 兵马司
bizheng 弊政
bu'anbenfen 不安本分
bugu yanmian 不顾颜面
bujie 部结
Bujun tongling 步军统领
bunjun 步军
canling 参领
chaoshen 朝审
che 车
chengshu 城属
chizhang anjian 笞杖案件
chizi 赤子
chuzheng 出征
cifengyizhang 此风一长
da gao 大诰
Da Ming huidian, 大明会典
dalisi qing 大理寺卿
dalisi 大理寺
- daoyuan 道员
dazui 大罪
dianli 典例
dingli 定例
dongbing 东兵
Dongchang 东厂
dongfu 东妇
dongren 东人
dongsu 东司
dubu si 督捕司
dubu yamen 督捕衙门
ducha yuan 都察院
Ducheng 都城
duji 笃疾
Du zhihui tongzhi 都指挥同知
duo ceng hui shen zhi 多层会审制
dutong 都统
erfasi 二法司
fa wai zhi fa 法外之法
fanyi 番役
fan zui mian faqian 犯罪免发遣
fei fa zhi ping 非法之平
fenfeng 分封
Fengtian fu 奉天府
fuyin 府尹
fuzheng dachen 辅政大臣
fu 府
gongcheng 宫城
gongke you jishizhong 工科右给事中
gu 姑
guan erbi 贯耳鼻
guanggun 光棍
guansi churu ren zui 官司出入人罪
gugongren 雇工人
guo 国

guofan 过犯
guoshisha 过失杀
gushan ezhen 固山额真
gu sha 故杀
han you shilang 汉右侍郎
Hanjun 汉军
hanlin yuan 翰林院
Henan qinglisi 河南清吏司
huangcheng 皇城
hubu 户部
hubu zeli 户部则例
huidian 会典
jia xia you fu zhi pufu 家下有夫之仆妇
jian 贱
jianmin 贱民
Jiedao Ting 街道厅
jindi 禁地
Jingcheng 京城
Jingdu 京都
jingfu 京府
jingguan 京官
Jingshi 京师
jingxian 京县
Jinyi Wei 锦衣卫
jin 矜
jishizhong 给事中
jiulü 旧律
jiumen tidu 九门提督
jiuqing 九卿
jimo 籍没
juanjin 圈禁
jumu 举目
juren 举人
kaoli 靠例
kechao 科抄
langzhong 郎中
li qingwang 礼亲王
li 例
liangren 良人

liangyi 两议
liaodong jiangjun 辽东将军
like 礼科
linghu 另户
linshi tingxing 临时停刑
liumin 流民
liuyang 留养
lunchang 伦常
lü 律
Luanyi Wei 銮仪卫
lüli 律例
lütou pai 绿头牌
lüying 绿营
man zuo shilang 满左侍郎
man 满
manzhou benwei 满洲本位
manzhou jiaren 满洲家人
manzhou jimo zhi fa 满洲籍没之法
manzhou 满洲
menjun 门军
mingfen 名分
minren 民人
minsheng 民生
Nangan xunfu 南赣巡抚
nancheng 南城
nei dachen 内大臣
nei 内
neidi 内地
neifu 内府
neiwufu 内务府
neiyong 内用
nilü 拟律
Ningguta 宁古塔
niu-lu ezhen 牛录额真
nucai 奴才
nupu 奴仆
peiren 赔人
pihong 披红
qian san men 前三门
qiangdao 强盗

qiangduo 抢夺
qiangzei 强贼
qiji 旗档
qiwu 旗务
qinglisi 清吏司
Qing huidian shili 清会典事例
Qing huidian 清会典
qing qu 轻去
qingfa 清法
qingshi 情实
qinyun 钦允
qipao 旗袍
qiqin 期亲
qiuhou 秋后
qiu jue 秋决
qiushen 秋审
qixia jianu 旗下家奴
quan di 圈地
quanjin 圈禁
reshen 热审
san fa si 三法司
sanchi 三尺
Shanghai Guan 山海关
Shangyangbao 尚阳堡
shaosha 烧杀
Shengjing dingli 盛京定例
shengjing jiangjun 盛京将军
Shengjing 盛京
shengyuan 生员
Shenxing Si 慎刑司
shi fou tou chong 是否投充
shijian 事件
Shilu 实录
shouzu wucuo 手足无措
shuangjiang 霜降
shuntian xun'an 顺天巡按
Shuntian xunfu 顺天巡抚
tangguan 堂官
taodang 逃档
tiansheng zhengmin 天生烝民

tianxia 天下
tiben 题本
tidu jiumen xunbu wuying bujun tongling 提督九门巡捕五营步军统领
tijie 题结
tongzheng si 通政司
touchong 投充
tuheile weile 土黑勒威勒
tuzui yishang anjian 徒罪以上案件
wai 外
waiguan 外官
waixiang 外厢
wanjiang 鋟匠
wenguan 文官
wu zui ke ke anjian 无罪可科案件
wucheng 五城
wusha 误杀
wushang 误伤
xiadeng qiren 下等旗人
xiansan 闲散
xianshen anjian 现审案件
xiaoshi 小事
xinfa 新法
xingbu you shilang 刑部右侍郎
xingbu 刑部
xin zhiqian 新制钱
xunbu zhongying 巡捕中营
xunbu ying 巡捕营
xuncheng yushi 巡城御史
xuxing 恤刑
yadu 衙蠹
yi 疑
yiguan 衣冠
yilü 依律
ying 营
yingyizhe fanzui 应议者犯罪
yisi anjian 疑似案件
yizhao 遗诏
yizheng dachen 议政大臣
yizheng wang dachen huiyi 议政王大臣会

议

yong 用

yuanwailang 员外郎

yuegong 乐工

za 杂

zafan sizui 杂犯死罪

zeli 则例

zhanshifu shaozhan 詹事府少詹

zhaoli ding de zui 照例定的罪

zhenfan sizui 真犯死罪

zhengshen qiren 正身旗人

zhengzang 正赃

Zhidao le 知道了

zhifang qinglisi 职方清吏司

zhifu 知府

zhixian 知县

zhong fan 重犯

zhongxia 中夏

zhuding kanyu 注定看語

zhushi 主事

zhufang 驻防

zhuji shenzhuan fuhe zhi 逐级审转复核制

Zijin Cheng 紫禁城

Zongren fu 宗人府

zouzhe 奏折

zuoling 佐领

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- DGZEFZL *Zongrenfu zeli* 宗人府则例 (Substatutes of the Imperial Clan Court), Qianlong edition, cited as QLZRFZL with volume number; Daoguang edition, cited as DGZRFZL; Guangxu edition, cited as GXZRFZL.
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- DQLJJ *Daqinglü jijie fuli*(大清律集解附例 Statutes of the great Qing with collected commentaries and appended Substatutes). This is a version of the Qing code promulgated in 1647. This edition was printed in the Kangxi period. Punctated by Wang Hongzhi 王宏治 and Li Jianyu 李建渝. Reprint, in *Zhongguo Zhenxi falü dianji xubian* 中国珍稀法律典籍续编 (A continued compilation of Chinese rare legal codes), di wu ce, Ha'erbin: Heilongjiang renmin chubanshe, 2002. The *Daqinglü fu* (大清律附 An appendix of the statute of the great Qing) was reprinted in the same volume.
- DXXZ *Daxing xianzhi* 大兴县志, compiled by Zhang Maojie 张茂节 and Li Kaitai 李开泰 1685, hand-copied version, at Beijing University Library.
- GJTS *Gujin tushu jicheng* 古今图书集成 (Complete collection of books from the Earliest to Current Times), cited by volume (*ce* 册) and page number. I used the online database at <http://www.greatman.com.tw/ancientclassics.htm>
- GXHD *Da Qing huidia* (Guangxu chao) 大清会典 (Collected regulations of the great Qing dynasty). Beijing: Zhonghua shuju, reprint, 1991.

- GXHDSL *DaQing huidian shili* 大清会典事例 (The Collected institutes and precedents of the great Qing Dynasty), Guangxu edition, Beijing: Zhonghua shuju, reprint, 1991.
- GXZRFZL See DGZRFZL
- HQZY *Huang qing zou yi* 皇清奏议 (Memorials submitted to the Qing emperors). Edited by Renheqinchuan jushi 仁和琴川居士. Taipei: Wenhai chubanshe, reprint, 1967.
- JJCLF *Junjichu lufu* 军机处录副 (Duplicate copies of memorials at the Grand Council), cited with file number.
- JQHD *Da Qing huidian* (Jiaqing chao) (Collected regulations of the great Qing dynasty—Jiaqing edition), reprint in Shen Yunlong ed. *Jindai zhongguo shiliao congkan sanbian*, di 64 ji, Taipei: Wenhai chubanshe, 1991.
- KXHD *Da Qing huidian* (Kangxi chao) (Collected regulations of the great Qing dynasty—Kangxi edition), reprint in Shen Yunlong ed. *Jindai zhongguo shiliao congkan sanbian*, di 72-73 ji, Taipei: Wenhai chubanshe, 1992-1993.
- KXQJZ *Kangxi qijuzhu* 康熙起居注 (Records of daily activities of the Kangxi emperor), Beijing: Zhonghua shuju, 1984.
- KYQ *Kang Yong Qian shiqi chengxiang renmin fankang douzheng ziliao* 康雍乾时期城乡人民反抗斗争资料 (Materials on urban and rural peoples struggles in the Kangxi, Yongzheng, and Qianlong periods), by the Institute of Qing History and the Teaching and Recenter Center of Chinese Political Institutions in the Department of Archives at Renmin University, Beijing, Zhonghua shuju, 1979.
- MQDA *Mingqing dang'an* 明清档案 (Archives of the Ming and Qing dynasties), Taipei : Zhong yang yan jiu yuan li shi yu yan yan jiu suo, Yin xing zhe Lian jing chu ban si ye gong si, 1986-. All archives are from the NGDK.
- MWLD *Man wen lao dang* (满文老档 Manchu-written old documents), translated and edited by Zhongguo diyi lishi dang'anguan (the First Historical Archives of China) and Zhongguo shehui kexue yuan lishi yanjiusuo (The Institute of Historical Research, Chinese Academy of Social Science), Beijing: Zhonghua shuju, 1990. Cited with page number.
- NGDK *Neige daku dang'an* 内阁大库档案 (Grand Secretariat Archives), at Institution of History and Philology, Academia Sinica, Taipei, cited with file number.
- NGTB *Neige tibe-Beida yijiao tiben* 内阁题本—北大移交题本 (Grand Secretariat routine memorials – Routine memorials transferred from Beijing University), at the First Historical Archives of China, Beijing, cited with file number.
- NWFLW *Neiwufu dang'an – laiwen* 内务府档案·来文 (Archives of the Imperial Household Department—Received Documents), cited with volume

- number.
- QCGSY *Qing chu nei guoshiyuan manwen dang'an yi bian* 清初内国史院满文案译编, edited by the First Historical Archives of China, Beijing: Guangming riban chubanshe, 1989.
- QCTD *Qing chao tongdian* 清朝通典, reprint, Shanghai: Shangwu yinshuguan, 1935.
- QDTG *Qin ding taigui* 钦定台规 (Imperially commissioned regulations of the Censorate). Edited by Huizhong. Reprint, in *Siku weishou shu jikan* 四库未收书辑刊, di 2 ji, di 26 ce, Beijing: Beijing chubanshe, 2000.
- QCWXTK *Qing chao wenxian tongkao* 清朝文献通考, reprint, Shanghai: Shangwu yinshuguan, 1936.
- QLHD *Da Qing huidian* (Qianlong chao) (Collected regulations of the great Qing dynasty -- Qianlong edition). In *Wenyuange siku quanshu*. Di 619 ce. Taipei: Taiwan Shangwu yinshuguan, 1986.
- QLZRFZL See DGZRFZL
- QSG *Qingshi gao* 清史稿 (A draft history of the Qing dynasty), Chief editor, Zhao Erxun. Reprint, Beijing: Zhonghua shuju, 2003.
- QSL *Da Qing shi lu* 清实录 (Veritable Records of Successive Reigns of the Great Qing Dynasty), cited with the specific title for each emperor, e.g., SZ for the Shunzhi emperor, KX for the Kangxi emperor, etc... Reprint, Beijing: Zhonghua shuju, 1985-1987.
- SJXB *Shengjing xingbu yuandang* 盛京刑部原档 (The original archives at the Board of Punishment in Shengjing), translated by the First Historical Archives of China and the Institution of Qing History at Renmin University, Beijing: qunzhong chubanshe, 1985.
- SJMWTR *Shengjing manwen taoren dang* (盛京满文逃人档 Shengjing Manchurian-written Archives of Fugitives). Published at *Qingdai dang'an shiliao congbian* 清代档案史料丛编 (Collected materials from Qing archives), vol. 14, Beijing: Zhonghua shuju, 1990, pp. 1-21.
- SZTR "Shunzhi nianjian de taoren wenti" 顺治年间的逃人问题 (The fugitive issue during the Shunzhi era). Published at *Qingdai dang'an shiliao congbian* 清代档案史料丛编 (Collected materials from Qing archives), vol. 10, Beijing: Zhonghua shuju, 1984, pp. 64-130.
- X AHL Reprint, in *Xiuxu siku quanshu*, di 867-871 ce, Shanghai: Shanghai guji chubanshe, 2002.
- YZDG *Yuzhi dagao* 御制大诰 (the imperially compiled Grand Pronouncements), reprint, in *Zhongguo Zhenxi falü dianji jicheng* 中国珍稀法律典籍集成 (A compilation of Chinese rare legal codes), Beijing: kexue chubanshe, 1994.
- YZHD *Da Qing huidian* (Yongzheng chao), (Collected regulations of the great Qing dynasty -- Yongzheng edition), reprint in Shen Yunlong ed. *Jindai zhongguo shiliao congkan sanbian*, di 77-79 ji, Taipei: Wenhai chubanshe, 1994-1995.

ZRFLW *Zongrenfu dang'an -- laiwen* 宗人府档案·来文 (Archives of the Imperial Clan Court—Received Documents), cited with volume numbers.

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