

Handout #2

Selected Statutes from the Qing Legal Codes

Source: The statutes and sub-statutes from the *Qing Penal Codes* here are derived from Xue Yunsheng’s *Duli cunyi* [Concentration on doubtful matters while perusing the sub-statutes], edited, punctuated, and annotated by Huang Jingjia (Taipei: Cheng wen chubanshe, 1970). This version is adopted because Huang numbered the statutes and sub-statutes to the *Qing Penal Codes*. It makes tracing items much easier than using the original *Qing Penal Codes*.

Homicide

Statute # 285-20

In a homicide case in which a woman kills someone during a rape attempt, if there is concrete evidence that the killing actually took place while the rape attempt was in progress, the woman shall be acquitted, regardless of whether the victim of the homicide is a criminal who attempted to rape or to entice the woman into having sexual relations.

Assault and Battery

Statute # 318-05

In a case where a person who is lower in the mourning hierarchy unintentionally injures someone who is higher in the mourning hierarchy and [the injury] results in death, [the offender] may be punished by immediate decapitation. During the trial if it is found that [the offender] did not act violently with murderous intent, [the trial official] shall be allowed to declare pardonable circumstances. [This document] shall be attached [to the conviction report] and memorialized [to the emperor] for his final decision.

Statute # 319-00

For son or grandson who assaults his grandfather, grandmother, father, or mother, and for a wife or concubine who assaults her husband’s grandfather, grandmother, father or mother, [the punishment] shall be decapitation. In the case of killing [the grandparents or parents], [the criminal] shall be punished by lingering. In the case of involuntary homicide, [the criminal shall be punished by] 100 strokes of heavy bamboo and exile of 3,000 *li* [1,000 miles]. In the case of only causing injury, [the criminal shall be punished by] 100 strokes of heavy bamboo and banished for three years.

Statute # 319-09 (see note on page 2)

In a case where a daughter-in-law injures her father-in-law while resisting a rape attempt by the father-in-law, the trial official shall determine the following:

1. If it is indeed true that she was attacked suddenly and unexpectedly; [or]
2. if the situation was extremely urgent and she spontaneously responded to the circumstance with determined force; or
3. if her father-in-law confesses in the court to the rape attempt; or the neighbors or relatives testify that [the father-in-law] had a pattern of such licentious and depraved behavior;

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4. or the people in the same room witnessed the crime, and there is no doubt that the father-in-law attempted to rape or raped the daughter-in-law.

If it is determined that such was the case, the daughter-in-law shall be recommended for punishment according to the statute of assaulting one’s husband’s parents [immediate decapitation].

The Ministry of Punishment shall then respectfully cite *The Case of Xing Jie* (which suggests a reduced punishment due to extenuating circumstances) as precedent when it reviews the case. The final decision regarding the woman’s pardon shall be made by the emperor during his final review of the case.

Ming-te Pan’s notes on statute #319-09:

In *The Case of Xing Jie*, Xing Jie, the father-in-law of Woman Wu, attempted to rape his daughter-in-law. Xing did not succeed because Woman Wu resisted him. In the course of this resistance, Wu bit off Xing’s lip. Injuring one’s father-in-law is a crime punishable by decapitation, but when this case came before the emperor during the review process, he pardoned Woman Wu. The case became a precedent, and a new sub-statute was established in the Qing penal code for cases in which a daughter-in-law injured her father-in-law while resisting rape.

The circumstances of our sample case in the unit are slightly different from that of Xing Jie because Woman Wu of the Xings only injured her father-in-law, while Woman Xie of the Lin family killed her father-in-law in the course of fending him off. The former was an assault case and the latter was a homicide case. This crucial difference meant that *The Case of Woman Xie* also became a new sub-statute in the Qing legal code.