

Handout #5

Law and Society in the Qing

A Brief Introduction to the Capital Punishment Review Process

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The Punishments

Depending on the severity of the crime, punishments during the Qing dynasty (1644-1911) could be as extreme as execution by slicing, called “lingering.” It could also include immediate decapitation, decapitation after the autumn assizes, immediate strangulation, strangulation after the autumn assizes, beatings with heavy bamboo, caning, exile, penal servitude, or fines. Except those who received the most severe punishment of execution by lingering, immediate decapitation, or strangulation (which required prompt action by the court on a case-by-case basis), all capital punishment cases had to await the emperor’s final decision following the annual autumn assizes session.

Types of Punishment:

Types of immediate capital punishment; used in the most severe cases:

- Lingering/Slicing
- Decapitation
- Strangulation

Types of delayed capital punishment; sent for review to the Autumn Assizes:

- Decapitation
- Strangulation

Types of non-capital punishment; used in less serious cases:

- Beatings with heavy bamboo
- Caning
- Exile
- Penal servitude
- Fines

The System of Autumn Assizes

The autumn assizes session, held in Beijing, the imperial capital, normally began each year early in the eighth month of the lunar calendar. It was a procedure meant to avoid mistakes in capital punishment cases. According to the *Qing Administrative Regulations* (Qing Huidian Shili), when a homicide took place, a county magistrate was responsible for investigating the crime scene and was to report the case immediately to his superiors. The magistrate’s office was supposed to apprehend the criminals involved in the case and subpoena relevant witnesses for testimony. The county magistrate, however, had no power to try the case. In a case warranting capital punishment, after the county magistrate conducted an investigation, apprehended and interrogated the suspect(s), and acquired testimony from all witnesses, he was to pass the documents up

through the bureaucratic hierarchy for review. At the local government level, the officials involved in this review process were the prefect, the provincial judicial commissioner (*anchasi*), and the provincial governor or governor-general. Capital punishment cases were tried at the provincial court in the presence of the suspects, witnesses, and evidence. After trying the cases, the provincial court, led by the provincial judicial commissioner, recommended punishment for the convicted criminals and passed the cases to the governor or governor general for confirmation. The law required that each capital punishment case be reviewed by the Ministry of Punishment (*xingbu*) in Beijing and then again in the annual autumn assizes session.

To facilitate the autumn assizes, the provincial governor was to collaborate with the provincial judicial commissioner to prepare all relevant documentation concerning the case for the Ministry of Punishments, including the criminals’ confessions, testimony, and evidence, together with the recommended sentence and reviewers’ comments. As mandated in the *Qing Administrative Regulations*, the deadline for each province to submit these documentations was between the end of the lunar year and on the thirtieth day of the third month of the lunar calendar of the subsequent year, depending on the distance between each province and Beijing. The longer the distance between the province and Beijing, the earlier the deadline was set. Before the former session began, a preliminary review took place in the Ministry of Punishment. In the eighth month of the lunar calendar, a joint review board called the Three High Courts of Judicature (*sanfasi*), which consisted of the officials from the Ministry of Punishment, the Court of Revision (*dalisi*), and the Censorate, began the formal review of all cases submitted before the deadline. After reviewing and deliberating, the Three High Courts of Judicature made recommendations to put each case under one of the following four categories: “true” (*shi*), “deferred” (*huan*), “pardonable” (*jin*), and “serving” [parents] (*liu*). This last category, “serving,” meant that the convict was spared because he needed to serve his aging parents. The Three High Courts of Judicature then memorialized the emperor about the recommended sentences for each case. As a matter of formality, the emperor would approve the recommendations for all cases. For those convicts who fell under the “pardonable” and “serving” categories, because the emperor had approved the recommendations for commutation, they would be punished by a reduced penalty such as beating by heavy bamboo, exile, penal servitude, or a combination of both. These cases, therefore, were closed. For those who fell under the category of “deferred,” their cases would be reviewed again in the autumn assizes session the next year. With these issues resolved, the annual autumn assizes session concluded.

Final Review and Check-Off for Execution

Before the government carried out the execution of the convicts who fell under the “true” category, there was yet another review, this time by the emperor personally. The final review for execution normally took place in a three-month period between the ninth and eleventh months of the lunar calendar. The emperor, wearing a white robe, attended these final review sessions with his ministers and high-ranking court officials. (The color white is a symbol of mourning in Chinese tradition.) In each session, an official would read the cases in the “true” category. After the official finished a case, the emperor gave his final decision. If he checked the case off with vermilion ink, the edict

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would be sent immediately from the court to the province where the convict was kept. The local government was required by law to carry out the execution on the date it received the execution name list that bore the emperor’s vermilion ink. For those convicts whose names were not checked by the emperor, their cases would be rolled into the cases for the autumn assizes session in the subsequent year(s). If the emperor did not check the convict’s name in the “true” category for ten consecutive autumn assizes sessions, the case would then be transferred to the “deferred” category. If a convict stayed in the “deferred” category for three consecutive autumn assizes sessions, the case would be commuted.

Summary of the Judicial Review Bureaucracy

County Magistrate: The local official responsible for investigating crimes, questioning witnesses, apprehending criminals, and obtaining confessions.

Prefect of Prefecture: One of the officials involved in the system of bureaucratic review at the provincial level. Prefects did not try capital cases but they did review reports submitted by the magistrate to the provincial office regarding such cases.

Provincial Judicial Commissioner: The provincial official responsible for presiding over capital trials in the provincial court and then making recommendations for punishment to the Provincial Governor.

Provincial Governor/Governor General: The provincial official responsible for the approval of all sentence recommendations of the Provincial Court.

Ministry of Punishment: The imperial ministry responsible for reviewing all capital sentences approved by the Provincial Governor prior to the Autumn Assizes.

Autumn Assizes: The annual session of judicial review in which all capital sentences are reviewed by the Three High Courts of Judicature and then the Emperor.

Three High Courts of Judicature: The imperial body responsible for formally reviewing all capital sentences in the autumn assize session, and making recommendations to the Emperor by placing each case into one of four categories: “true,” which sends the case to the Emperor for final approval; “deferred,” which defers a final judgment until the following year; “pardonable,” which replaces the capital punishment with a lesser punishment; or “serving,” which means that the convict is needed to take care of his or her aging parents, and leads to a reduction of the sentence to a non-capital punishment.

Emperor: The imperial sovereign and highest official in the imperial government. Responsible for final decisions with respect to capital punishment. As a formality, the emperor approves all rulings of the Three High Courts of Judicature, but then conducts his own review of all “true” cases, in which he either provides the final approval of the punishment or defers his decision until the following year.