

“Your Honor, I am Innocent”: Law and Society in Late Imperial China

Ming-te Pan

History Department

State University of New York at Oswego

exeasmail@columbia.edu

Table of Contents

1. Themes and Goals
2. Audience and Uses
3. Instructor’s Introduction
4. Instructor Readings
5. Student Readings
6. Student Activity
7. Further Reading

Handouts

1. A homicide case involving a father-in-law who attempted to rape his daughter-in-law
2. Selected statutes from the Qing legal code
3. Mourning Relationships in the Qing
4. A translation of comments by the Autumn Assizes Board regarding the case in Handout #1
5. “Law and Society in the Qing,” a brief introduction to the capital punishment review process in Qing China
6. Excerpts from the *Analects*
7. Sample Reading Guide for students
8. Translation of a 1983 criminal case involving rape

Abstract

This unit seeks to introduce students to the concept of “Confucian society” in China during the Qing dynasty (1644-1911) through a nineteenth-century homicide case that resulted from an attempted rape. Through an examination of the case, statutes cited in the ruling, and legal commentaries written by the case review officials, this unit engages students in a discussion of what it means to be a member of Confucian society and highlights philosophical issues related to capital punishment.

1. Themes and Goals

“Law and society” is a paradigm that has gained momentum in recent scholarship. The law both reflects the collective values of a society and can act as a tool for the state to mold its subjects’ behavior. Working like snapshots of a society, legal cases document the

implementation of the law and record human activities that took place in a given society. From this perspective, these legal cases form a rich body of source material for understanding fundamental aspects of social values, social structure, and human relations. If the law was a tool used by the state in an attempt to construct an ideal world, then these cases allow us to examine how the state interpreted its doctrines and to ask how these interpretations affected daily life.

This unit encourages students to explore Chinese culture in the Qing by engaging them with a homicide case. For most American students who grew up with Perry Mason or Judge Judy, law is more than difficult jargon in legal textbooks; it is a constant component of daily life. Everyone can engage with the situations that arise in legal cases, and thus this unit provides a common ground where lack of prior knowledge of either Chinese history or legal traditions is no longer a barrier to understanding a remote culture. Students quickly begin to discuss the circumstances in this dramatic homicide case, and this may prompt them to pursue other aspects of Chinese culture, society, and law as well.

The unit has two goals. The first is to give students a general understanding of how Confucian principles shaped society in Qing China (1644-1911) and what it meant to live in a Confucian society. It provides students an opportunity to explore gender relations, family structure, and social hierarchy in Chinese society. The second goal is to create a context for students to contemplate such issues as “What is justice?” and “Should we continue capital punishment”?

For a survey course such as World History or Introduction to East Asia, the unit illustrates what it meant to live in a Confucian society. It can be used after the introduction of Confucian principles or when the instructor introduces East Asia around 1600 to the students. Instructors in these courses may want to use this unit to discuss the following:

- How does Confucianism shape Chinese institutions?
- What does it mean to live in a Confucian society?
- How did family hierarchy play out in the Chinese legal system?
- What status did women have in late imperial China?

The focus can easily shift to gender relations, gender and society, comparative legal history, and philosophy. Taking the issue of “What is justice?” for example, one could easily find that a case in nineteenth-century China where capital punishment was justifiable might not be considered justifiable in the West during the same time period; by the same token, it might not have been justifiable a century later in 1930s China. These changes indicate that the meaning of justice evolves and is not absolute. The philosophical issues behind capital punishment illustrated in the unit’s sample case then become: If the concept of justice is constantly changing, can there be true justice? Is it justifiable to sanction an individual with the ultimate punishment — a punishment that cannot be reversed if it is later found to be wrong — when the meaning of justice is not crystal clear and varies by time and place? Along the same line of thinking, the instructor may also encourage students to use the sample case to engage the question of whether “intrinsic evil” exists in human society. If so, what is intrinsic evil? Should intrinsic evil be dealt with by capital punishment?

The instructor may be surprised to see how quickly support for capital punishment among students declines if proponents of capital punishment are required to witness or carry out an execution. If a person believes strongly in a course of action, why should he or she have a problem carrying out the procedures necessary to realizing that course of action? If someone is

not so sure they could carry out a punishment that is purported to be just and fair, does it mean that the punishment might have not been fair or just?

2. Audience and Uses

Audience: High school or undergraduate students.

This unit could be useful in a wide variety of undergraduate courses, including but not limited to:

- World History
- East Asian History and Culture
- History of Qing China
- History of Modern and Early Modern China
- Comparative Law and Society
- Women's History and Women's Studies
- Gender and Society
- History of the Family
- Sociology of the Family
- Legal History

3. Instructor's Introduction

[Handout #5, "Law and the Society in the Qing" provides additional background information.]

Before the first decade of the twentieth century, China had maintained a unique legal system for more than two millennia. The origin of this legal system can be traced back to the Qin dynasty (221-207 BCE). The Qin legal system exemplified the ideas of the so-called Legalist tradition, which maintained that human nature is innately evil. Based on this belief, Legalist thought argued that only by meting out harsh punishments and proper rewards could states or kings shape their subjects' behavior to benefit their interests. After the quick collapse of the Qin, the prototype of the long-lived Chinese legal system began to take shape in the Han (206 BCE-220 CE). Injecting Confucian principles into its legal institutions was one of the most important achievements of Han law.

The Tang dynasty (618-907) legal codes and institutions were the second watershed development in the Chinese legal system, setting precedents for the next millennia. The Tang Code, whose twelve chapters held 500 statutes, was the model for subsequent Chinese dynasties and was adopted by the court of Heian Japan (794-1185). One major contribution of the Tang system was its integration of administrative ordinances and legal precedents to form a comprehensive juridical institution, in which the statutes took priority over administrative ordinances and legal precedents. At the beginning of the Ming dynasty (1368-1644), the imperial court adopted the Tang legal code in its entirety. After several revisions, the Chinese legal system reached a stage of maturity in the sixteenth century. When the Manchus, a foreign tribe from the northeast of China, established the Qing dynasty (1644-1911) in China, the Manchu court basically kept the Ming legal system intact. Between 1644 and 1911, the Qing court revised its legal codes 30 times. Compared with the Ming legal code, which had no more

than several hundred statutes and sub-statutes, the Qing legal code contained 1,907 statutes and sub-statutes by the late nineteenth century. The case included in this unit is a homicide case that took place in 1830. After the Review Board deliberated and made its recommendation to the emperor, and after the emperor then handed down his final decision, the case became a sub-statute and was added to the Qing legal code.

While increased professionalization affected the practice of law in Western countries during the nineteenth century, China did not develop the profession of attorney in its legal tradition. Most Chinese officials who handled investigations and trials received little formal training in law before assuming their governmental duties. There were neither universities nor law schools in China at this time to train professionals to staff these positions. Instead, personnel for the legal system were recruited based on the civil service examination, which drew its curriculum from the Confucian classics. The legal knowledge that Confucian scholar-officials gained was either from their on-the-job experience or from legal handbooks they read on the side while preparing for the civil service exams. As a result, most Chinese “judges” were self-taught practitioners of the law.

During the Qing dynasty, the county magistrate — the lowest official appointed by the court to administer the basic unit of local government — was responsible for investigating criminal cases that took place in his jurisdiction. The trial of a capital case would take place in the court, which was held by the provincial judicial commissioner in the provincial capital. The Provincial Governor, or Governor General, who was often in charge of more than one province, had the authority to review the case and recommended punishment following the trial. Finally, officials in the Ministry of Punishment in Beijing would review all capital punishment cases.

In the Chinese legal tradition, the court was quite adamant in prohibiting the practice of law as a profession. Those who provided legal advice for a living were called “litigation masters” (*songshi*). Instructing or assisting a third party in how to argue cases in court was a crime punishable by exile. Thus, no third party would be allowed to argue a case in the court on behalf of a suspect. Furthermore, there was no jury system in the Chinese tradition. In criminal proceedings, which included capital punishment cases, it was up to the magistrate, officials in the Autumn Assizes Board, and, ultimately, the emperor to judge whether suspects were guilty and what kind of punishments convicted criminals would receive. Is this kind of legal system inherently flawed in its protection of the rights of the individual? This case may provide students with one answer to this question.

One unique feature of the Chinese legal system was its implementation of Confucian principles. This is an area students may find intriguing. From the case cited in this unit, one can see how the state reinforced Confucian principles via the law, even though using law as a means of governing is contrary to teachings in the Confucian *Analects*. Confucius argued that when law is used as a tool for governing, the people become evasive and shameless (*Analects* chapter 2, section 3). This is because the law will not be able to prevent all illicit actions, and evil-minded people will always be able to find loopholes in the law to avoid sanctions. Other examples of the influence of Confucianism on Chinese law are numerous. According to Qing legal code, if a poor person steals from his/her relatives, s/he should be given a punishment that is less severe than the punishment s/he would receive if s/he had stolen from someone who is not his/her relative. The reason behind this is that, according to Confucian thought, relatives are obligated to help one another.

Such lofty ideals are belied by the case at the center of this unit, however. *The Case of Woman Xie* (in this unit all legal cases are italicized when cited as precedent or otherwise) tells

of a social drama that left one man dead and a woman, his daughter-in-law, facing possible execution in the most gruesome manner. Woman Xie was a commoner living in Shaanxi Province. Like most married women, she resided in the home of her husband's family. One day while her husband, a hired laborer, was away from the village for work, she was attacked by her father-in-law, Lin Guoheng. In the course of fending off the attempted rape, Woman Xie cut off her father-in-law's penis, leaving him mortally wounded. Woman Xie was taken into custody and tried for the murder of her father-in-law. In the end, after the case made its way to the highest echelons of the Qing bureaucracy, Woman Xie's life was spared.

Although anecdotal in nature, this case informs readers about certain aspects of Qing society. We see, for example, the problems that resulted from people of different generations living under one roof. Both the parents and their married sons lived in one household, and this situation increased the chance for such a tragedy to take place. On the other hand, the behavior of Lin Guoheng, the father-in-law, was anything but ideally "Confucian." In this event, the illicit side of human nature seemed to overpower Confucian morality. As the Autumn Assizes officials point out in the commentary, it would be too much to expect that all subjects behave like sages who always follow Confucian moral principles. This is also why strict hierarchical moral principles were needed to promote Confucianism in daily life.

Not everyone lived in a happy and self-sustaining community during the Qing. Lin Xueyong, whose wife killed his father in our sample case, was a hired laborer who worked outside his home. Here we can see how economic necessity shaped social practice and family structure. Because the Lin family did not have enough income to sustain itself, Lin Xueyong, the son, was forced to hire himself out as a laborer, a move that shows how idealized family structures were altered in response to the economic and social dictates of the times. The law provided a mechanism through which the government sought to negotiate this gap between ideal and practice, norm and reality.

Compared with their male counterparts, women in the Qing enjoyed less freedom. Because of the practice of universal marriage, almost every woman played three roles in her life: a daughter, a wife, and a mother. Many ethnographic accounts indicate that the happiest period in a woman's life was from birth to roughly age five or six, because Chinese culture tends to indulge young children. However, as a daughter, a girl had to obey her father. In times of crisis, girls were often abandoned by their parents. A significant percentage of women suffered from the practice of foot-binding, which usually took place around the age of five or six. The prevalence of foot-binding meant that most women during this period suffered from reduced physical mobility by the age of six. After enduring several years of pain as the bones and tendons in the foot were re-shaped, women's wounds would heal, but they remained unable to walk normally. When it came to their marriages, virtually no women had a say in determining who her husband would be. After she was married into the alien environment of her husband's familial home, the woman had to obey both her husband and his parents. Until she gave birth to a son, her status in her husband's family was that of a sojourner. The bond between mother and sons were strong, then, because her sons were her protection and the source of her identity in her husband's family.

This case also raises a common question of whether the trial officials, with no formal training in law, actually adhered to the law. The case allows us to witness how the trial officials cited relevant statutes and how officials argued the case during the review process. Given the fact that Qing law discriminated against women and the Qing elite subscribed to the so-called "cult of chastity" — the idea that women should guard their chastity with their life — was it

possible to make a convincing defense of Woman Xie along Confucian lines? We should pay special attention to whether and how the so-called “cult of chastity” held by the elite manifested itself in Qing law and in officials’ arguments. Can we conclude that the law, the Confucian elite, or the officials who handled the case, discriminated against Woman Xie?

4. Instructor Readings

Readings are ranked according to the following star* system:

- *** Most important
- ** Recommended
- * Optional

*1. Birge, Bettine. *Women, Property, and Confucian Reaction in Sung and Yüan China (960-1368)*. Cambridge: Cambridge University Press, 2002.

This book illustrates the change of women’s status in China during the Sung and Yuan dynasties. Chapter 3 is useful to understand the influence of Neo-Confucianism (*lixue*) on the status of women in China. Chapter 4 explores the influence of Mongol rule during the Yuan dynasty (1279-1368) on Chinese women’s social and economic status.

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

This is one of the most comprehensive studies on the Qing legal system. It includes a discussion of the Chinese legal tradition, legal system, and 190 case studies. The section titled “The Family” (pp. 192-199) illustrates how important family relationships were in the administration of justice under the Qing. This section can be assigned if students are interested in the subject. This section also offers a succinct summary of how Confucian principles of family manifest themselves in the laws as the core of human relations.

***3. Eastman, Lloyd E. “The Yin Side of Society: Secret Societies, Bandits, and Feuds,” chap. 10 in *Family, Fields, and Ancestors: Constancy and Change in China’s Social and Economic History, 1550-1949*. New York: Oxford University Press, 1988. Pages 217-240.

This brief introduction illustrates why the state used law as a means to ensure social order in spite of Confucian teachings against such an approach.

**4. Mann, Susan. “Widows in the Kinship, Class, and Community Structures of Qing Dynasty China.” *The Journal of Asian Studies*, Vol. 46, No. 1. (Feb., 1987), pp. 37-56.

This article is helpful for understanding Confucian ideas about chastity.

**5. Spence, Jonathan. *The Death of Woman Wang*. New York: Penguin Books, 1978.

This book is structured around the story of a homicide case involving members of an extended family. Chapters 3 and 4 contain many stories about the complicated and sometimes unorthodox roles played by women in the Qing. Chapter 3 also includes a story of how Confucian principles and the Qing legal system shaped human behavior in Qing society.

***6. Ng, Vivien W. "Ideology and Sexuality: Rape Laws in Qing China." *Journal of Asian Studies*, Vol. 46, No. 1 (1987), pp. 57-69.

This article gives readers a concise summary of rape laws in the Qing.

**7. *Qiuju* (Execution in Autumn), Directed by Li Xing. With English subtitles. 100 minutes.

This movie won best film at Taiwan's Golden Horse Awards in 1972. Unfortunately, the film is not widely available. It can be obtained in stores specializing in Chinese films or on the Internet in VCD format. The film concerns a man who committed a crime and was to be executed in the autumn. Because he was the only son in the family and did not marry, the scheduled execution would mean the termination of his family line. The mother of the convict, therefore, arranged for a young woman to go to the prison in the hope that the young woman would produce a male heir. In fact, according to Qing law, when a man committed a crime punishable by execution, if he was the only male offspring in the family, he could be granted leniency for the purpose of serving his aged parents and carrying on the family line. Certainly, not all the criminals in this situation were entitled to his treatment. Some crimes, such as treason or the murder of parents or grandparents could not be reduced or deferred. Nevertheless, the film shows how the Confucian demand that men carry on the family line could affect penal codes in China.

*8. Handout #8: Translation of a 1983 criminal case in which a father repeatedly raped his daughter.

The instructor can use this document to encourage students to conduct a comparative analysis. Students can compare the conviction statement of the People's Court of Lilin County with the legal opinion written by the imperial officials over 150 years ago. The instructor might encourage students to consider the following questions: "What changes do you find in Chinese legal system by comparing these two cases?" "In what ways do you find the opinion from the People's Court of Lilin County to resemble the line of thinking in the Qing case?"

5. Student Readings

The required readings for this unit can be configured in different ways according to the level and length of the class. Depending on how much time is available, the instructor can determine how many readings the students should do before they come to class. In order for the core unit to function properly, each student should complete the readings marked as “Most important”. Readings are ranked according to the star* system.

*** Most important

** Recommended

* Optional

*** 1. Eastman, Lloyd E. “Family and the Individual in Chinese Society,” chap. 2 in *Family, Fields, and Ancestors: Constancy and Change in China’s Social and Economic History, 1550-1949*. New York: Oxford University Press, 1988. Pages 15-40.

This chapter gives a concise overview of Chinese family structure in the Qing era. For the purpose of discussion in class, students should pay special attention to the hierarchical structure of the Chinese family and the status of women in the family.

*** 2. Handout #6: Excerpts from *The Analects (Lunyu)*.

** 3. *The Classic of Filial Piety (Xiaojing)*, chapters 1-14.

Full text of *The Classic of Filial Piety* in both the original Chinese and English translation can be found at:

<http://www.chinapage.com/confucius/xiaojing-be.html>

The instructor should encourage students to make connections between Confucian principles, the family system, and the Qing legal code. Fourteen chapters might sound like a lot, but each chapter is no more than a paragraph in length.

*** 4. Handout #1: A homicide case involving a father-in-law who attempted to rape his daughter-in-law.

*** 5. Handout #2: Selected statutes from the Qing legal code that relate to the sample case.

*** 6. Handout #3: A description of “Mourning Relationships” in the Qing.

*** 7. Handout #4: A translation of comments by the Autumn Assizes Board regarding the case in Handout #1.

** 8. Handout #5: “Law and Society in the Qing”

This handout provides a brief introduction to the capital punishment review process in Qing China. The instructor may prefer to prepare a 5-minute lecture based on this handout instead of distributing it to students as a reading assignment.

6. Student Activities

The activities proposed here can be completed in one class session or may be divided to fit into two or three instructional sessions. The instructor should distribute the first four student readings (Eastman, Handout #1, *The Classic of Filial Piety*, and Handout #6) before the discussion is scheduled to take place. The instructor may wish to prepare a reading guide featuring study questions and provide it to the class with the reading materials. (See Handout #7 for a sample reading guide for the Eastman reading.) In the reading guide, the instructor should encourage students to pay attention to the hierarchical family structure, the concept of filial piety, and the notion of chastity. The instructor may also want to encourage students to make connections between these practices and the principles delineated in the *Analects* and the *Classic of Filial Piety*. As mentioned above, instructors may wish to offer a short lecture rather than distributing Handout #5 to the class. The summary of the judicial review bureaucracy appended to Handout #5 could be used to supplement the lecture or as an in-class handout or overhead projector illustration.

Activity I (20 minutes):

The instructor can launch the class session by asking students to form small groups. Students should imagine themselves as a 21st-century judge sitting on the bench of a US court and hearing the case of a daughter-in-law who killed her father-in-law as he attempted to rape her. Each group should reach a verdict for the case and be prepared to explain the rationale behind their verdict.

After each group announces its verdict and its rationale, the instructor should encourage the class to deliberate the case further. The purpose of such deliberations is to see whether different groups can iron out their differences and reach a consensus on the verdict. After the class reaches its consensus on the verdict, the students should go back to their groups. The instructor can now make Handouts #2 and #3 available to every student before proceeding to *Activity II*.

Sample instructions for *Activity I*:

“Imagine that your group constitutes the United States Supreme Court, and that you have been asked to rule on the following case. A woman is brought before you who admits to killing her father-in-law as he attempted to rape her. She has admitted that her actions led to the man’s death, and it is absolutely certain that he was trying to rape her at the time. Prepare a verdict in the case and be prepared to explain the rationale behind your

verdict. The point here is not to focus on details and evidence—assume that the events in question are uncontested—but rather to reach a just verdict.”

Activity II (20 minutes):

The task of each group now is to reach a verdict on the case by imagining they were imperial magistrates in the Qing. The instructor should remind the students that each imperial magistrate in the Qing was trained in the Confucian classics, which constituted the curriculum of the imperial civil service examinations. Their verdict should be in accordance with the principles of the Confucian classics and should abide by Qing legal codes. Students should now rely on the information in Handouts #2 and #3. They should also be urged to make use of material presented in the first four student readings (Eastman, Handout #6, *The Classic of Filial Piety*, and Handout #1). Direct references to the text are encouraged. Before students begin their deliberations, the instructor may want to sketch out the different punishments one could receive for committing a crime in the Qing. (This information is in Handout #5.) Another way to proceed is for the instructor to give a short lecture about the Autumn Assizes procedures in the Qing. (See Handout #5, “Law and Society in the Qing.”)

Sample instructions for *Activity II*:

“Now imagine that you are Imperial Magistrates in Qing China ruling on the case presented in Handout #1. You have been trained in the Confucian classics, which constituted the curriculum of the exam you took in order to become a magistrate. Your verdict should be in accordance with the principles of the Confucian classics that you read for class (excerpts from *The Analects* and *The Classic of Filial Piety*) and should abide by the Qing legal codes presented in Handout #2.”

Activity III (10-15 minutes):

After listening to the verdict from each group as students play the role of Imperial Magistrates, the comments from the Autumn Assizes Review Board on the case (Handout #4) should be distributed to the students. At this point, the instructor should encourage students in the class to answer questions along these lines: How does ideology affect the way society is organized? How does ideology affect the law? What implicit and explicit consequences would the statute have on human behavior? What did it mean to be a member of Confucian society, and what did it mean to a man or a woman to live in a society that was organized under Confucian principles?

If students want to continue the discussion, the instructor could allocate another class session to discuss the meaning of justice. Were the laws and the arguments made by members of the Autumn Assizes Board just and fair according to Confucian standards? Is the punishment of the daughter-in-law just and fair based on the moral standards of the twenty-first century? Is there such a thing as absolute justice and fairness?

7. Further Reading

Select titles on criminal law and capital punishment in late imperial China.

Alford, William. "Of Arsenic and Old Laws: Looking Anew at Criminal Justice in Late Imperial China," *California Law Review* Vol. 72, No. 1 (1984), pp. 1180-1254.

Chen, Fu-mei Chang. "On Analogy in Ch'ing Law." *Harvard Journal of Asiatic Studies*, Vol. 30 (1970), pp. 212-224.

Chu, T'ung-tsu. *Law and Society in Traditional China*. Paris and The Hague: Mouton & Company, 1984.

McKnight, Brian E. "T'ang Law and Later Law: The Roots of Continuity." *Journal of the American Oriental Society*, Vol. 115, No. 3 (July-Sep. 1995), pp. 410-420.

Meijer, M. J. "The Autumn Assizes." *Toung Pao*, Vol. 70 (1984), pp. 1-17.

Michael, Franz. "The Role of Law in Traditional, Nationalist and Communist China" *The China Quarterly*, No. 9 (Jan.-March, 1962), pp. 124-148.

Ocko, Jonathan K. "I'll Take It All the Way to Beijing: Capital Appeals in the Qing." *The Journal of Asian Studies*, Vol. 47, No. 2 (1988), pp. 291-315.

Qin, Zheng and Zhou Guangyuan. "Pursuing Perfection: Formation of the Qing Code." *Modern China*, Vol. 21, No. 3 (July, 1995), pp. 310-344.

Pan, Ming-te. "Translation of Eight Capital Punishment Cases and Their Rulings."

Reed, Bradley W. "Money and Justice: Clerks, Runners, and the Magistrate's Court in Late Imperial Sichuan." *Modern China*, Vol. 21, No. 3 (July, 1995), pp. 345-382.

Sommer, Matthew. *Sex, Law, and Society in Late Imperial China*. Stanford: University of California Press, 2000.